DBLBBITH   Hearing

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK
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3
BITVESTMENT PARTNERS LLC,
4
                 Plaintiff,
5
        v.   13 CV 7632 (RWS)
6
COINLAB, INC., CLI HOLDINGS,
7 INC., ALYDIAN INC., PETER
VESSENES and JOHN DOE,
8
                 Defendants.
9
------------------------------x
10   New York, N.Y.
                                         November 21, 2013
11   10:07 a.m.

12 Before:

13   HON. ROBERT W. SWEET,

14   District Judge

15   APPEARANCES

16 REYHANI NEMIROVSKY LLP
      Attorneys for Plaintiff
17 BRYAN ISAAC REYHANI

18 LOEB & LOEB LLP
      Attorneys for Plaintiff
19 DANIELLE JANINE KIWAK

20 NESENOFF & MILTENBERG, LLP
      Attorneys for Defendants
21 MARCO AURELIO SANTORI

22 BRESKIN JOHNSON TOWNSEND PLLC
      Attorneys for Defendants
23 ROGER M. TOWNSEND

24

25

DBLBBITH   Hearing

1   (In open court)

2   THE COURT: Mr. Olsen, you're still under oath. Good

3   morning.

4   THE WITNESS: Good morning.

5   MR. TOWNSEND: Thank you, your Honor.

6   HANS OLSEN, resumed.

7   DIRECT EXAMINATION (Continued)

8   BY MR. TOWNSEND:

9   Q. Good morning, Mr. Olsen.

10   A. Good morning.

11   Q. I'd like to ask you about Alydian's business operations and

12   business model.

13   Can you tell me whether Alydian used a hosting model

14   or a retail model, and you could explain what the difference is

15   between those?

16   A. Okay. At Alydian we chose to operate in that hosting model

17   as opposed to retail. The original plan was to deploy what we

18   call enterprise-level-capacity bitcoin mining.

19   THE COURT: I'm sorry, inter what?

20   THE WITNESS: Enterprise.

21   THE COURT: Oh, okay.

22   A. Which is large scale, which is not practical if you sell

23   smaller mining rigs to consumers or customers. So we elected

24   to operate at an enterprise- or server-level operation, where

25   you deploy very large capacity.

DBLBBITH   Olsen - direct

1   Q. Okay. And how big is Alydian compared to other

2   enterprise-level bitcoin miners today?

3   A. Well, the original intent for Alydian was to operate

4   somewhere in the 300 to 500 terahash. And at the initial

5   assumptions, we thought that the total capacity would be about

6   1,000 terahashes. So we would be approximately one-third of

7   what was deployed.

8   However, as it turned out, as we talked about many

9   times here, the network capacity is currently at about 5,000

10   terahashes and we are currently deployed at about 65

11   terahashes, getting up to about 200 over the next couple of

12   weeks.

13   Q. And when you say "we," what do you mean in that context?

14   A. Alydian.

15   THE COURT: And when you say one-third deployed, do

16   you mean that your capacity would be one-third of the-- what is

17   the word?-- the network?

18   THE WITNESS: Of the total network, correct.

19   THE COURT: Okay.

20   Q. Okay. And so if you're at 65 --

21   THE COURT: Forgive me. I'm sorry for the

22   interruption.

23   MR. TOWNSEND: Sure.

24   THE COURT: And how many other miners are there of

25   that size or larger?

DBLBBITH   Olsen - direct

1   THE WITNESS: Well, it's a little hard to tell because

2   there's not full transparency on what is on the network. But

3   based on what is sort of public information, we would

4   apparently rank in the top three of miners, which doesn't sound

5   right based on the total network capacity that's out there.

6   But we suspect that there are a number of very large miners

7   that distribute their deployments over a number of different

8   entities. So it's not fully transparent what's going on.

9   THE COURT: And I expect the miners pool?

10   THE WITNESS: Possibly, yes.

11   THE COURT: Okay. Thank you.

12   Oh, I know. There is no way, I take it, that anybody

13   who enters into the network can know who else is on the

14   network?

15   THE WITNESS: Not fully, no. No, there's not. I

16   wish I knew today. It would enable us to do much better

17   planning.

18   THE COURT: Right. Thank you.

19   BY MR. TOWNSEND:

20   Q. And that's even more the case for where the network might

21   be if you began a project today and by the time it got fully

22   deployed?

23   A. Right. One of the things that we've been faced with here

24   is that we've been wrong in our assumptions about the speed of

25   deployment of the rate at which companies have deployed mining

DBLBBITH   Olsen - direct

1   equipment. Based on industry data that we have available to

2   us, it would seem that the rate of deployment is not likely to

3   decrease, certainly in the near future.

4   So based on this --

5   Q. I'm sorry, you said rate of deployment or the rate of

6   increasing the speed of the network do you mean?

7   A. Rate of deployment, which is same as increasing the

8   speed.

9   Q. I see.

10   A. That this hypergrowth, it is very, very high risk if

11   anybody would enter into that market today with a new mining

12   effort.

13   Q. And we spoke about this yesterday, that your assumptions

14   were incorrect about the speed of increase of the rate of

15   bitcoin mining network.

16   Your assumptions were also incorrect about the cost of

17   the Alydian deployment. Is that right?

18   A. Yes. And going back to our conversations that we had

19   regarding the Cedar Hill investment, Dan and I, in fact, had

20   many conversations about our assumptions for what the network

21   speed or the network capacity would be. We talked about

22   extreme scenarios, effectively what we're in now, but we

23   collectively felt that it just didn't seem reasonable that

24   there would be this much network growth and speed at this point

25   in time. So we were incorrect. The assumptions were

DBLBBITH   Olsen - direct

1   incorrect, but based on the data that we had at the time, it

2   felt like that was a good assumption.

3   Given the rate that we saw was happening back in

4   August/early September time frame, we realized that we needed

5   to get our deployment done, completed, very, very quickly. In

6   order to do that, we had to expedite material. We had to do a

7   lot of unnatural things to get our manufacturing going. And we

8   ended up in many cases doubling our manufacturing costs, so it

9   became a very expensive venture for us to --

10   Q. And that was just from acceleration fees or was that due to

11   other factors as well?

12   A. It was a combination of acceleration fees, which were

13   primarily on what we call long lead items.

14   THE COURT: I'm sorry, which you call?

15   THE WITNESS: Long lead-time items.

16   THE COURT: Oh.

17   THE WITNESS: Where we had to pay sometimes double and

18   triple to get acceleration over normal manufacturing cycle

19   times. So it was a combination of buying through distribution,

20   which is an expensive sourcing channel, and the acceleration

21   fees that we have to pay.

22   Q. And were those forces within your control?

23   A. No.

24   Q. And what are some examples of long lead-time capital

25   expenditures that you had to make?

DBLBBITH   Olsen - direct

1   A.   Well, as an example, the custom integrated circuits -- or

2   ASICs as they've also been referred to -- is an example of

3   where we end up paying very, very high acceleration fees to the

4   wafer foundry, which is the contract manufacturer that produces

5   the silicon or the chips.

6   We were in our assumptions planning on being able to,

7   one, get access to these accelerated manufacturing blocks,

8   which are not generally available. There are only a few of

9   them available at any given time. And we discussed that

10   extensively, whether we would be able to get access. The

11   challenge with getting access to these accelerated lots is that

12   you only know that when you place your orders. You cannot

13   assume that you will get it. It all depends on the particular

14   capacity in a wafer foundry at a given time.

15   We were not able to get the acceleration on some of

16   the material we wanted to order. And as a result of that, we

17   have been delayed. And, in fact, that has contributed to our

18   decision not to deploy one-third of the capacity that we

19   originally planned on.

20   Q.   And why did you make-- and when I say "you," why did

21   Alydian make the determination not to deploy?

22   A.   Primarily because as we were delayed by a month and the

23   delay, combined with the increased network capacity, just made

24   it a losing proposition for us. We did not feel that we could

25   make any positive return on deploying that material.

DBLBBITH   Olsen - direct

1   Q. And when you say a "positive return," do you mean just

2   strictly that the financial rewards from the incremental

3   expense would be less than the cost?

4   A. We could barely cover what it would cost us to manufacture,

5   let alone pay for, operating expenses and return any type of

6   profit.

7   Q. And when you say that, you're not factoring in the

8   potential cost to the plaintiff in this case, are you?

9   A. Correct.

10 Q. You said before that you are presently at 65-- again, I

11 need to be clear.

12   Alydian is at 65 terahashes and hopes to scale up to

13 200 terahashes in the next several weeks.

14   What percentage is that of the network? I don't want

15 to put you on the spot with math, but --

16 A. So now you're asking me to do math?

17 Q. Yes.

18 A. So out of 5,000, it's 200-- about 200 terahashes. So it's

19 about four --

20 Q. And that's assuming you're at 5,000 terahashes when you

21 finish deploying the extra 200. Right?

22 A. Yes, and that's not clear. So we're in the single-digit

23 percentage of the network, yeah.

24 Q. And so what does it mean to have the network-- what's the

25 net effect in terms of bitcoins mined if the network is

DBLBBITH   Olsen - direct

1 accelerating at a 3-percent-per-day rate?

2 A. Well, the net effect is that you need to deploy more

3 capacity to maintain your proportional share. At the moment,

4 at our 65 terahashes, we make about 40 bitcoins.

5 Q. Over what period?

6 A. A day.

7 Q. So if you make 40 bitcoins today and the network increases

8 3 percent today, how many bitcoins will you make tomorrow?

9 A. Are you asking me to do math?

10 Q. Well, you could just tell me the math equation. Is it 40

11 less 3 percent?

12 A. Well, there's a daily increase of 3 percent.

13 Q. Right.

14 A. So you would make less.

15 Q. Three percent less than 40. Right?

16 A. Yeah.

17 Q. And I won't make you do that math.

18   You started to talk before about the decision that

19 Alydian made to operate on an enterprise level.

20   What are the alternatives to an enterprise-level

21 deployment?

22 A. Well, the alternative is what is referred to as a retail

23 model, where you sell smaller rigs that can be deployed by

24 individuals or groups of individuals.

25   We actually considered to do that as a means of

DBLBBITH   Olsen - direct

1   deploying the material that we will not deploy at an enterprise

2   level. We went through an analysis and we made plans. We, in

3   fact, designed an engineering model for that, but we elected

4   not to market it even though we thought that we might be able

5   to sell this to a certain class of customers. But we felt that

6   we were just passing on the risk to the consumer and it

7   wouldn't be appropriate because we felt we could not make a

8   return on it. And, likewise, we felt that in a retail model,

9   that customers couldn't make return on it either.

10   Q. And when you say the "risk," what do you mean by that?

11   A. Well what we just talked about is by the time they receive

12   the mining rigs, they start to operate them, the network speed

13   will continue to increase at a rate where they cannot make

14   their return on what they paid us for the minirigs, as we

15   called them.

16   Q. And so the shift from the enterprise-level business model

17   to a retail model, would you have to redesign the bitcoin

18   mining rigs?

19   A. We would have to, yes. We would have to.

20   Q. And then could anyone just plug in a bitcoin mining rig

21   like they would a computer?

22   A. In the model that we had, they could, but it required

23   redesign. The typical retail model of mining rigs that are

24   offered are, indeed, equipment that you can just plug into the

25   wall. It's not the path that we had decided to pursue.

DBLBBITH   Olsen – direct

1 Q. And why is that?

2 A. We felt that at a business level or at a return level,

3 that customers just couldn't make money on what we would sell

4 them.

5 Q. And are you aware today that there are retail models and

6 people, bitcoin miners, operating on a retail model?

7 A. There's many. There are many that's doing it. I know it's

8 been suggested that Coinlab should go out and acquire mining

9 rigs for the retail channel. It's my assessment that what's

10 available in the market today is largely obsolete technology

11 that's being sold to fairly unsophisticated customers, or it is

12 technology that you can place orders, but you will not be able

13 to take delivery for several months.

14   And you, again, take the risk that the network growth

15 will effectively obsolete the equipment that you are placing

16 orders for.

17 Q. And you've reviewed Mr. Gallancy's declarations in this

18 case. Right?

19 A. Correct.

20 Q. And have you looked at the proposed means that he suggested

21 for mining bitcoins?

22 A. I have. And while on the surface it seems like a

23 reasonable and rational approach, when you get into the

24 details, I don't think it-- it doesn't pencil out. As I

25 mentioned, you can purchase obsolete equipment, effectively, or

DBLBBITH   Olsen - direct

1   what I would deem obsolete. You would have to buy inordinate

2   amounts of it in order to get to a capacity where you could

3   mine 8,000 bitcoins, or you would have to place a bet on

4   buying new technology that is not available for several

5   months.

6   I think in either case it's just not practical. I

7   mean, depending on how you set up your assumptions-- and,

8   granted, you can debate the assumptions. But if we were to go

9   out-- or if Coinlab -- I'm sorry. If Coinlab was to go out and

10   acquire in the retail business mining equipment, it's our

11   assessment that you would have to spend potentially-- today you

12   could spend $7 to $10 million to buy enough equipment to mine

13   8,000 bitcoins that you would get over the next six to seven

14   months. And it just doesn't seem that that's a reasonable

15   approach.

16   Q. And do you believe that there's capacity that exists today

17   that could be deployed on the network, that would be sufficient

18   to mine-- strike that.

19   Do you believe that through the retail bitcoin mining

20   network, retail bitcoin mining vendors, that you could go

21   purchase enough capacity to even mine 8,000 bitcoins?

22   A. I think it would be very difficult. You can buy--

23   again, you can buy older, obsolete technology, but you can't

24   buy in the quantity that you would need; or if you want the

25   current technology, you can't get it for an extended period of

DBLBBITH   Olsen - direct

1   time.

2   Q. And by the time you got that current technology, is there a

3   risk that it would be obsolete?

4   A. It would be a very, very high risk, yeah.

5   Q. We've talked a little bit about-- and I want to make

6   clear the kind of lines between Alydian and Coinlab for a

7   minute.

8   You are a contractor to Coinlab. Is that right?

9   A. Correct.

10 Q. But you, through Coinlab, work on the Alydian project?

11 A. I've been assigned to the Alydian project, yes.

12 Q. Are you the only employee or contractor within Coinlab that

13 is currently working on the Alydian project?

14 A. There is a total of five of us that either contracted by

15 Coinlab or employed by Coinlab that are assigned to Alydian.

16 Q. Currently?

17 A. Currently, yeah.

18 Q. And who are those people?

19 A. It is my lead engineer, Robert Batten.

20 Q. Can you spell their names for the court reporter?

21 A. Robert Batten, B-a-t-t-e-n; Jodie Brady, who operates as

22 our finance and accounting director; it is Bobby Seitenfeikler.

23 Q. Seitensticker?

24 A. Seitensticker.

25 Q. Just Bobby will do.

DBLBBITH   Olsen - direct

1   A.   We refer to him as "Bobby." Last name is too difficult.

2   And myself.

3   Q.   And Mr. Vessenes?

4   A.   And Mr. Vessenes, yeah, as managing director.

5   Q.   And to be clear, all those people are currently working

6   on the Alydian project while it's in bankruptcy. Is that

7   right?

8   A.   Correct. We continue to operate and manufacture and

9   deploy.

10 Q.   And if those people were to be pulled from the Alydian

11 project to work on a new project for Coinlab, would the Alydian

12 project suffer as a result?

13 A.   Well, obviously it would because we are the resources. And

14 if we are pulled away, we could not continue to perform under

15 the bankruptcy.

16 Q.   And would you be able to deploy from 65 terahashes even to

17 the 200 terahash level?

18 A.   Not if we were pulled off, no.

19 Q.   And could you even operate at the 65 terahash level?

20 A.   No.

21 Q.   And if you were personally asked to engage in a new

22 bitcoin mining venture, would you stick around for that

23 project?

24 A.   Likely not.

25 Q.   And why is that?

DBLBBITH   Olsen - direct

1   A.   I just-- for the reasons that we decided at Alydian: That

2   we did not see a meaningful way of deploying and making a good

3   business. I feel that it's not an endeavor that would bring

4   any favorable return other than maybe an interesting

5   engineering project. I just don't-- I think many are faced

6   with it today.

7   I personally believe that there will be a major

8   shake-up in the mining industry because there's just a glut of

9   companies that are trying to do this. To start a new effort in

10   the midst of this just doesn't seem to make any business sense

11   and I don't think I personally would unless I could be

12   convinced that you could make a successful business out of it

13   and I don't think that you can in today's environment.

14   Q.   And do you believe the other employees and contractors

15   within Coinlab that are working on the Alydian project would

16   stick around for a new project?

17   A.   I know that's highly speculative, but I would think not,

18   no.

19   Q.   Thank you.

20   MR. TOWNSEND: No further questions.

21   THE COURT: Let me ask you, what is the status of

22   Alydian today? Is it operating?

23   THE WITNESS: Yes, we are operating. Call it business

24   as usual.

25   THE COURT: And so you are producing bitcoins?

DBLBBITH   Olsen – direct

1   THE WITNESS: Yes, we are.

2   THE COURT: Thank you.

3   BY MR. TOWNSEND:

4   Q. And that's the bitcoins. You're producing about 40 a

5   day?

6   A. We produce about 40 a day which, yeah, is the current

7   output.

8   Q. And is it your understanding that those are assets in the

9   bankruptcy estate?

10   A. Correct.

11   CROSS-EXAMINATION

12   BY MR. REYHANI:

13   Q. Good morning, Mr. Olsen.

14   A. Good morning.

15   Q. Would you agree with me that people open restaurants all

16   the time?

17   A. They do, yeah.

18   Q. Restaurants are generally considered probably a bad

19   business to enter?

20   A. I don't know that.

21   Q. Restaurants tend to go out of business quite often.

22   THE COURT: Let's get away from the restaurants.

23   Okay?

24   A. Yeah, they come and go.

25   Q. All right. Start-ups generally carry losses for quite a

DBLBBITH   Olsen - cross

1   long time before they're profitable. Is that correct?

2   A. That's correct.

3   Q. Let's take Twitter, for example. It just went public. Has

4   Twitter made any money?

5   A. No, not to my knowledge.

6   Q. So those are growing pains of a business. Correct?

7   A. Well, Twitter may not be a good example. It's a silly

8   business, but anyway --

9   Q. It's reasonable for a business to have growing pains as

10 it's growing. Correct?

11 A. Correct.

12 Q. In your declaration, you testified at paragraph 26 that "In

13 July it also became increasingly clear that the bitcoin mining

14 network speed was accelerating exponentially. We saw an

15 increasing number of mining companies introducing 45-nanometer

16 node technology and several companies introducing a

17 28-nanometer node device availability in Q3 and Q4/2013.

18 Alydian's rigs operated on a 65-nanometer node technology and

19 could not compete with 45-nanometer node technology or

20 28-nanometer node technology."

21   Do you recall making that statement?

22 A. I do.

23   THE COURT: You all speak-- you have your language,

24 which is somewhat foreign to a Modern European history major.

25   Nanometer. What is a nanometer? I think I know, but

1   tell me. What is it?

2   THE WITNESS: It is a fraction of a meter.

3   THE COURT: And what's a meter? I mean, we're not

4   talking distance.

5   THE WITNESS: It's (indicating).

6   THE COURT: Oh, you are?

7   THE WITNESS: Yes, we are.

8   THE COURT: You mean a meter as in distance?

9   THE WITNESS: Yeah. So a nanometer is-- what is it?

10   It's one --

11   THE COURT: So what is it a measurement of?

12   THE WITNESS: It's a measurement of what's called the

13   linewidth of the manufacturing technology to produce the

14   integrated circuits. So, you may have heard of Moore's law.

15   THE COURT: Yes.

16   THE WITNESS: And what Moore's law talks about is

17   effectively the linewidth; how geometries of integrated

18   circuits get smaller and smaller and smaller.

19   THE COURT: All right.

20   THE WITNESS: So the 110 nanometer refers to a certain

21   linewidth of the manufacturing technology and that linewidth

22   gets smaller and smaller and smaller.

23   THE COURT: And what's the effect of that with respect

24   to the machine?

25   THE WITNESS: With respect to the machine is that,

DBLBBITH   Olsen - cross

1 generally, the smaller the geometry, you get higher

2 performance, more processing power, and you get more density.

3 You can produce more transistors in a given area.

4   THE COURT: Okay. Thanks.

5   MR. REYHANI: Actually now is probably a good time for

6 some show and tell. We bought this off of Amazon the other

7 day.

8   May I approach?

9   THE COURT: Yeah, sure.

10 BY MR. REYHANI:

11 Q. Do you know what this is?

12 A. It's a USB dongle for a U.S.-- it's a USB mining dongle, I

13 guess you would call it.

14   THE COURT: Spell that, the last word.

15   THE WITNESS: D-o-n-g-l-e. A dongle refers to a

16 device like this that you can plug into your computer USB

17 port.

18   THE COURT: I get it.

19 Q. And you could, on a much larger scale than that, mine with

20 equipment like that. Correct?

21 A. Yeah. And actually this is what I was referring to

22 earlier, is that I would consider this largely an obsolete

23 technology.

24 Q. But it's usable?

25 A. It is usable, yeah.

DBLBBITH   Olsen - cross

1   Q.   Okay.   And it contains in the center of that the SHA-256

2   core that is at the heart of mining bitcoins.   Correct?

3   A.   Yes.

4   Q.   So essentially your chipsets that you're running are

5   big-picture, larger versions of that?

6   A.   Yes.   It's a crude picture, but, yes.

7   Q.   And what is the nanometer scale on that, if you know?

8   A.   I don't know, but I would assume that it's probably 110.   I

9   don't know for sure.

10   Q.   But even at 110, you could still mine a bitcoin?

11   A.   At the current network, it would be probably --

12   Q.   Difficult?

13   A.   -- difficult.   .000 -- 00002 bitcoins per day.

14   Q.   But it's possible.

15   A.   (Indicating).

16   Q.   So prior to the August amended agreement, you're abundantly

17   aware that the industry was shifting down to 28-nanometer

18   chipsets?

19   A.   Correct.

20   Q.   And you and Peter had discussed this prior to the August

21   amended agreement?

22   A.   Correct.

23   Q.   And you were aware prior to the August amended agreement

24   that Alydian and/or Coinlab would need a cash infusion to keep

25   up with the other miners?

DBLBBITH   Olsen – cross

1   A.   We were aware we needed cash infusion to deploy what we had

2   for existing technology and we needed to deploy it quickly;

3   otherwise, we would not be providing any return.

4   Q.   And --

5   A.   We realized that we could not-- we did not raise money to

6   develop a 28-nanometer technology. We raised money to do a

7   very fast-track 65-nanometer project.

8   Q.   So you were aware that, absent a cash infusion, that

9   bankruptcy for Alydian was a real possibility prior to the

10   August agreement?

11   A.   Well, at that point we were considering it. It's been

12   discussed here that I recommended that we, as the team at

13   Alydian, really evaluate it, whether it made sense to proceed

14   or not. And we decided -- again, based on the assumptions we

15   made for network speed and the rate at which we could deploy --

16   that if we raised sufficient capital, that we could, in fact,

17   provide return that would repay our debts, repay the prebuyers,

18   pay off the obligations we had as an entity, and still make

19   some return.

20   Q.   Okay.

21   A.   Otherwise, we would not have done it. Now, what we did not

22   anticipate was this hyperaggressive growth of the network.

23   Q.   But absent that cash infusion, bankruptcy was a real

24   possibility?

25   A.   Well, at that point we just would have wound down the

DBLBBITH   Olsen - cross

1 effort, yeah.

2 Q. Okay.

3   THE COURT: Do you have any-- obviously you don't

4 know, but-- well, I guess you know as well as anybody. Why

5 that hypergrowth of the network?

6   THE WITNESS: Well, in fact, I don't know. We assumed

7 at the time that it would not grow. We looked at reasonable

8 assumptions for what we knew of competitors or other mining

9 companies in the market, what they could deploy. We looked at

10 what would be reasonable for new entries into the market at

11 that point. And our collective assessment was that it was

12 not going to grow as rapidly as, indeed, it has. It's like

13 any entity or company that sits down and looks at the market

14 and tries to make some projections as to what will happen.

15   I think one of the-- with my experience generally in

16 the industry, is that the mining activity is a completely new

17 business. It's the first time this is occurring using

18 semiconductors in this application. So there are no prior

19 history. There are no data that we can go back and look at.

20 And you assume that there is somewhat rational behavior, and

21 what we've seen is what I would call irrational behavior,

22 where --

23   THE COURT: A bubble.

24   THE WITNESS: Yes, a bubble.

25   THE COURT: Okay.

DBLBBITH   Olsen - cross

 1   BY MR. REYHANI:

 2   Q. Given your expertise in the semiconductor space, it's fair

 3   to say that you were aware long before July about 28-nanometer

 4   chipsets coming onto the market. Correct?

 5   A. It was expected that they would, yes.

 6   Q. Okay. And I assume that, given your expertise, that you're

 7   familiar with the International Technology Roadmap for

 8   semiconductors?

 9   A. Correct.

10   Q. Anybody worth a grain of salt in the business is aware of

11   the Roadmap for Semiconductors?

12   A. Yes. In fact, in the June/July time frame, our ambition at

13   Coinlab was to do a 28-nanometer project. But, again, taking a

14   more conservative approach, we decided that we were going to be

15   too late and we put all of our efforts on the rapid deployment

16   of the 65-nanometer technology.

17   Q. Okay. I'd like to show you something that we grabbed off

18   the internet.

19   MR. REYHANI: May I approach?

20   THE COURT: Sure.

21   Q. This is the roadmap that we were discussing. Correct?

22   A. Yeah, this is it.

23   Q. Are you familiar with this document?

24   A. Not this particular document, but I'm obviously familiar

25   with what's discussed in this document, yeah.

DBLBBITH   Olsen - cross

1 Q. Okay. So I'd like to turn your attention to page 4,

2 please.

3 A. Yeah.

4 Q. And hopefully I highlighted it in your version, also.

5   Do you see where it says "2013-28"?

6 A. Yeah.

7 Q. So it's been planned for at least since December of 2012

8 that 28-nanometer chipsets would come onto the market.

9 Correct?

10 A. Correct.

11 Q. And, likely, if I go out and find the prior years' versions

12 of these, it's going to forecast 28 nanometer will come onto

13 the market. Correct?

14 A. Absolutely.

15 Q. A 28-nanometer chip is smaller than a 65-nanometer chip.

16 Correct?

17 A. Implementing the same circuitry, yes. Yes.

18 Q. A 28-nanometer chip is more energy efficient than a

19 65-nanometer chip. Correct?

20 A. Correct.

21 Q. Other than those two differences in size and in energy,

22 isn't it true that there's no other material differences among

23 the chipsets?

24 A. Say that again.

25 Q. Other than the change in size and energy efficiency, isn't

DBLBBITH   Olsen - cross

1   it true that there's no other differences among the chipsets?

2   Material differences.

3   A. Well, the size reduction comes as a result of the

4   manufacturing technology that's used. So it's a very different

5   manufacturing technology. And, actually, in addition to the

6   power efficiency, you also get performance improvements, so we

7   shouldn't ignore that.

8   Q. But you could get the same performance improvements by

9   stacking additional 65-nanometer chipsets. Correct?

10 A. Not without other penalties.

11 Q. More energy?

12 A. More energy, yeah.

13 Q. But you can generate the same type of processing power by

14 just stacking additional 65 nanometers?

15 A. Within certain limits, not-- you can't just keep adding.

16 Q. Okay.

17 A. You have constraints. So depending on how you set your

18 constraints, you can or cannot do that.

19 Q. Yesterday Mr. Vessenes testified that all the vendors with

20 which you operate or engaged, they required cash payments up

21 front. More or less that was his testimony.

22 A. Correct.

23 Q. Isn't it true that Bright Semiconductor, also known as SMIC

24 Foundry, offered Coinlab purchase terms to obtain mining

25 equipment on credit?

DBLBBITH   Olsen – cross

1   A.   Yeah.   And I think -- as a matter of fact, I don't know

2   that I quoted it in my CV as an example, but in my testimony

3   yesterday I said with one exception.   And, in fact, SMIC is

4   that one exception.   They agreed to a 50 percent advance

5   payment or placement on the order and 50 percent at delivery.

6   That is correct.

7   Q.   So with bitcoin trading today at seven hundred, you would

8   have had that much more purchasing power because the price

9   wasn't going to change on the product.   Right?   Let me rephrase

10   that.

11   A.   Yeah.

12   Q.   You buy something for a million dollars in May, $500,000 up

13   front, $500,000 due in December.

14   A.   Okay.

15   Q.   If you have a million dollars in bitcoin sitting in your

16   account at that time and you pay $500,000 worth of bitcoin

17   then--

18   A.   Right.

19   Q.   -- but that other $500,000 is now worth 3.5 million, you

20   have additional purchasing power to use for your other

21   resources.   Correct?

22   A.   I guess, yeah.

23   Q.   You testified that you would not get into, I believe, the

24   bitcoin mining business now because you don't believe it's

25   profitable.   Correct?

DBLBBITH   Olsen - cross

1   A. That is my personal opinion.

2   Q. Okay. But everyone that's mining around the world, they're

3   not all doing it at a loss. Correct?

4   A. That, I don't know. I would speculate that it's a high

5   likelihood that most of them are. You have to realize that the

6   companies that are in the market today made decisions probably

7   a year ago to do this, and a year ago the bubble didn't exist.

8   The world was very different. The outlook on mining was very

9   different a year ago. Today when you look at the bubble, it

10   just doesn't seem to make sense.

11   Q. That's today, because your opinion is that there's a

12   bubble.

13   A. Correct.

14   Q. Okay. So let's say those 40 bitcoins that Alydian is

15   mining every single day, first it was $10 a coin, then $100 a

16   coin. Today it's $700 a coin. If it shoots up to, say, a

17   thousand or two thousand -- which based upon the growth rate is

18   possible -- Alydian would be profitable. Correct?

19   A. I guess you could create a scenario where that would be the

20   case, yes. You could create such assumption.

21   Q. Coinlab or Alydian might not be profitable today, but at

22   the flick of a switch, it could be profitable tomorrow. Isn't

23   that correct?

24   A. Based on certain assumptions, you could create that

25   scenario, yeah.

DBLBBITH   Olsen - cross

1   Q.   And even though Alydian's or Coinlab's costs have gone up

2   over the last few months, the revenue has also gone up,

3   correct, given the price of bitcoin?

4   A.   Alydian's return on the bitcoins has gone up, yes.

5   Q.   Dramatically. Right?

6   A.   Correct.

7   Q.   You discussed earlier that the options that were presented

8   subsequent to the issue of the TRO didn't make sense to you in

9   terms of mining bitcoins for Bitvestment. Correct?

10 A.   We decided that, as a business entity, that we could not

11 provide the returns to any of our obligations including

12 Bitvestment.

13 Q.   There are other enterprise-size players in the mining

14 field. Correct?

15 A.   I presume there are, yeah.

16 Q.   And those enterprise-size mining players would easily--

17 maybe not easily-- would have likely accepted Coinlab's money

18 in exchange for those enterprise-level miners producing

19 bitcoins. Isn't that correct?

20 A.   That, I could not tell. I would disagree, but you could

21 make that assumption.

22 Q.   They wouldn't take Coinlab's money?

23 A.   I don't think that there is the capacity out there. And I

24 don't know who these other enterprise players are. Like I

25 said, we are presumably one of the largest-- larger ones in the

DBLBBITH   Olsen - cross

 1   industry, but it's likely that there's somebody out there.

 2   Whether we would be able to go out and-- Coinlab, sorry, would

 3   be able to go out and source adequate capacity I think is very

 4   speculative and questionable.

 5   Q. So you stated earlier that you didn't want to engage in a

 6   new mining project to comply with the TRO. And I'm not trying

 7   to put words in your mouth. I think in sum and substance that

 8   was your testimony. Correct?

 9   A. I did not say that. I said I personally would not go out

10   and start it. If I had money available to me, I would not

11   invest them in a mining operation.

12   Q. Understood.

13   You evaluated-- you, along with your colleagues,

14   evaluated the options that the plaintiff presented, that the

15   plaintiff believed would assist Coinlab in complying with the

16   TRO. Correct?

17   A. Correct.

18   Q. And you determined that going out into the field and

19   buying mining rigs and doing the work yourselves was not

20   something that would generate sufficient return for Coinlab.

21   Correct?

22   A. Well, I think the distinction that probably should be made

23   here is my view is the Alydian view of it. And we have

24   evaluated or analyzed many different options for bringing

25   the returns that we had originally promised or expected. We

DBLBBITH   Olsen - cross

1   have found no options to do that, and as a result we took the

2   path. Our collective decision was that bankruptcy was the best

3   path for Alydian and that's where we're at today.

4   As far as Coinlab's initiatives as prompted by these

5   proceedings, I have not been part of that. I've expressed my

6   opinion that going out and sourcing capacity from the retail

7   channel does not seem to be a practical and economic way of

8   doing it. It would require analysis that we have not-- or that

9   at least I have not participated in to date.

10   Q. But Coinlab -- and I will say easily-- could easily have

11   contracted out with a third party to conduct the mining. Isn't

12   that correct?

13   A. I don't know easily. I could -- Coinlab could, I guess,

14   contract or consult with somebody that could make that

15   analysis.

16   Q. And Coinlab --

17   A. I think that before you do-- before you can assume that

18   you would do that, you would have to do an analysis that

19   would show that it would make sense to even try. And I

20   think -- my personal opinion is that it just doesn't seem to

21   make sense. As far as Coinlab's direction on this, I can't

22   speak to that.

23   Q. It doesn't make sense for Coinlab. Isn't that what you're

24   trying to say?

25   A. No, it doesn't make sense for Alydian to do that.

DBLBBITH   Olsen - cross

1   Q. It doesn't make sense for Alydian. Correct?

2   A. Yeah.

3   Q. But you could still generate the bitcoins?

4   A. You could, but why would you go out and expose yourself to

5   losses just to generate bitcoins?

6   Q. How many bitcoins are generated a day?

7   A. Well, Alydian, we generate 40. I think there's 3,600 by

8   the construction of the --

9   Q. Okay. How many bitcoins were generated since the TRO was

10 issued in this matter?

11 A. I don't know for sure. A number of 50,000 was quoted, but

12 I can't attest to that number.

13 Q. I think the number is closer to 63,000, but...

14   What is the rate-- what's the global-- what's the full

15 network capacity right now of terahashes, if I'm phrasing that

16 correctly?

17 A. Well, I don't know what it is right now. The latest check

18 was 5,000 terahashes, yeah.

19 Q. So if Coinlab contracted with a miner that has, let's say,

20 500 terahashes of capacity, they would essentially have

21 contracted with a miner that has one-tenth of the network

22 capacity. Correct?

23 A. Correct, yes.

24 Q. That's correct?

25 A. Correct.

DBLBBITH   Olsen - cross

1   Q. So if they had done that, of the 3,600 bitcoins generated

2   in a day, odds are that 360 bitcoins would be generated on that

3   contract per day?

4   A. Correct.

5   Q. So over the course of 30 days or so, we're looking at

6   10,000-plus bitcoins that would be generated on that contract.

7   Correct?

8   A. That's what the math would say, yes.

9   Q. But as far as you are aware, Coinlab didn't reach out to

10   any third parties to mine bitcoins on Bitvestment's behalf.

11   Right?

12   A. Not to my knowledge. I wouldn't necessarily know that.

13   But, again, I go back to I don't think-- even if Coinlab had

14   tried, I don't think they would have been successful.

15   MR. REYHANI: Nothing further. Oh, actually, one

16   second, please.

17   THE COURT: Sure.

18   (Pause)

19   MR. REYHANI: Nothing further.

20   THE COURT: Thank you.

21   MR. TOWNSEND: Very briefly, your Honor.

22   REDIRECT EXAMINATION

23   BY MR. TOWNSEND:

24   Q. Do you have any other observations about the USB stick that

25   are relevant to today's proceedings?

DBLBBITH   Olsen - redirect

1   A. No.

2   Q. I want to ask you about this document, briefly, that was

3   handed to you.

4   Can you describe what this is? Again to your

5   knowledge if you know what it is.

6   A. Yeah.

7   Q. Just for the Court, this is an International Technology

8   Roadmap for Semiconductors. Is that right?

9   A. Correct.

10   Q. And this doesn't tell you how quickly the new generation of

11   semiconductors will come on the market, does it?

12   A. No.

13   Q. And it doesn't tell you how many of the new generation of

14   semiconductors will come on the market, does it?

15   A. No, it does not. This speaks to the introduction of

16   manufacturing technologies, yes.

17   Q. In fact, you know today that there will be changes in

18   semiconductor size likely in the future, but you can't tell the

19   rate of change, can you?

20   A. Correct.

21   Q. Plaintiff's counsel talked to you about the SMIC vendor.

22   Do you recall that?

23   A. Yes.

24   Q. And that they would accept-- they were the one vendor that

25   would accept payment terms on credit that you testified about

DBLBBITH   Olsen - redirect

1   yesterday and again this morning. Is that right?

2   A.   Correct.

3   Q.   Of the total capital and operational expenses that Alydian

4   faced, what percentage would you estimate are associated with

5   the SMIC product?

6   A.   It's a very small percentage. You're asking me to do math

7   again, but the cost of a system is approximately-- when I say

8   "system," a system for us. Alydian produces about five

9   terahashes. A system costs about $7,500 a terahash. And the

10 semiconductor, the chip content on that is 128 times 48,

11 whatever that is. So it's about $600.

12 Q.   Of the $7,500?

13 A.   Yeah.

14 Q.   And the $7,500 is how big a percentage of the overall

15 capital and operational expenses that Alydian incurs?

16 A.   Again, off the top of my head, that's probably a third.

17 Q.   And when you made the decision or you participated in the

18 decision not to employ the extra mining rigs on behalf of

19 Alydian, was that because the operational costs of deployment,

20 even after you've spent a certain percentage of the capital

21 expenditures, were less than the projected revenue from

22 deployment?

23 A.   Correct.

24 Q.   And that decision, does that include payouts to other

25 creditors, including the plaintiff or other prebuyers, or was

DBLBBITH   Olsen - redirect

1 that just for day-to-day cash flow?

2 A. It was just day-to-day operational considerations.

3 Q. Plaintiff's counsel asked you to make an assumption of what

4 it would take for Alydian to make money -- and it was a snap --

5 tomorrow.

6   What assumption -- what world would exist if Alydian

7 could be cash flow positive tomorrow? It's hard, isn't it?

8 A. Yeah. Again, you're asking me to do math. It would be

9 very difficult.

10 Q. And basically that would be the price of bitcoins. Is that

11 right?

12 A. Yes.

13 Q. And if bitcoins were $10,000 tomorrow, would Alydian recoup

14 its capital losses, capital and operational losses?

15 A. At $10,000?

16 Q. Maybe. I don't want to put you on the spot.

17 A. Yeah. There's a lot of factors here, but it would have to

18 be in that order of magnitude, yeah.

19 Q. And to your knowledge, what would they -- you probably

20 didn't look this morning, but do you know what the bitcoin's

21 price was yesterday?

22 A. $500, I believe.

23 Q. Do the increases that you've observed in bitcoin value

24 compensate for the increase in costs and network speed that

25 Alydian experienced?

DBLBBITH   Olsen - redirect

1   A. No. And that was one of the-- that was a major-- that was

2   the major factor in our consideration to not proceed.

3   Q. If you consider capital and operational expenses, do you

4   think it is possible for Coinlab to have generated 8,000

5   bitcoins since November 5th, 2013?

6   A. I'm sorry, rephrase that.

7   Q. If you consider capital and operational expenses, do you

8   think it's possible for Coinlab to have generated 8,000

9   bitcoins since November 5th, 2013?

10 A. No.

11   MR. TOWNSEND: No further questions.

12   MR. REYHANI: We have nothing further, your Honor.

13   THE COURT: Thank you, Mr. Olsen.

14   (Witness excused)

15   THE COURT: Anything further?

16   MR. REYHANI: Yes, your Honor. We'd like to call

17 Mr. Gallancy.

18   THE COURT: Anything further from the defense?

19   MR. TOWNSEND: Nothing further, your Honor. Thank

20 you.

21   THE COURT: You're still under oath, Mr. Gallancy.

22   THE WITNESS: Yes, your Honor.

23   DANIEL GALLANCY,

24   called as a witness by the Plaintiff,

25   having been duly sworn, testified as follows:

DBLBBITH   Olsen - redirect

1 DIRECT EXAMINATION

2 BY MR. REYHANI:

3 Q. Good morning, Mr. Gallancy.

4 A. Good morning.

5 Q. Yesterday plaintiff's counsel-- excuse me, defense counsel

6 briefly touched on your qualifications as a chartered financial

7 analyst.

8   Would you be able to elaborate as to your educational

9 background?

10 A. Yes. I have a degree in physics and a degree in electrical

11 engineering.

12 Q. And where are those degrees from?

13 A. University of Pennsylvania.

14 Q. Do you have any graduate school degrees?

15 A. I have an MBA from Colombia Business School.

16 Q. And can you briefly describe for the Court your work

17 background?

18 A. Sure. I've been in the technology investing universe for

19 many years now, primarily working on-- or in large measure

20 working on investments in the semiconductor industry and

21 semiconductor capital equipment industry. And by that I mean

22 the companies that manufacture the machines that are used to

23 make semiconductors.

24   I've looked at lots of tech investments in my career.

25 And overall -- just number of investments overall, I've looked

DBLBBITH   Gallancy - direct

1   at hundreds.

2   Q. And you're familiar with all the terms that we've used

3   regarding 28-nanometer and 65-nanometer semiconductors or

4   chipsets?

5   A. Yes, both from my educational background and also from my

6   professional background. Very much so.

7   Q. Okay. And how far back does your experience with the

8   bitcoin industry go?

9   A. As far back as 2011.

10   Q. Is the fact that-- we've heard a lot about

11   impracticability.

12   Is the fact that bitcoin mining equipment is now

13   utilizing, or shortly in the future utilizing, 28-nanometer

14   technology some sort of surprise?

15   A. No. It's the most expected thing in the-- it's wholly

16   expected. It's exactly what one would expect.

17   Q. And why is it expected?

18   A. Because the ITRS roadmap that you had referred to before

19   basically talks about the progression of semiconductor

20   technology through time. And you have very large companies--

21   Intel, Samsung, Taiwan Semiconductor-- all basically

22   collaborating on sort of aggregated research and development

23   because they have to because of the inherent complexity and

24   size of the semiconductor industry makes it so that they have

25   to plan for many years in advance.

DBLBBITH   Gallancy - direct

1   So that's why that ITRS roadmap goes all the way out

2   to 2022 or something like that, because there's a ton of

3   advanced planning and people know many, many years in advance

4   what the technology node for semiconductors will be. It's not

5   a change in technology so much as just the regular course of

6   progress.

7   I think that Mr. Olsen referred to Moore's law and,

8   indeed, this is exactly it. It's just Moore's law and it's

9   widely known and widely expected.

10   Q.   And this is rudimentary knowledge in the industry?

11   A.   Yes.

12   Q.   So if everyone knows that 28-nanometer chipsets are on the

13   horizon, why would anyone use 65-nanometer chips to mine for

14   bitcoins or for anything else?

15   A.   Sixty-five-nanometer chips are still wholly viable for lots

16   of stuff. There's two things: First of all, it's a matter of

17   sufficiency. So it's just like if you have a computer that's a

18   year old, yes, you could describe it as obsolete, but it still

19   runs Microsoft Excel, it still runs Internet Explorer. It

20   still does everything you need to do. It's not the fastest in

21   the market, but you don't need the fastest or best on the

22   market to achieve the goal. You merely need something that's

23   sufficient to achieve the goal. And, indeed, 65-nanometer

24   chips do achieve the goal.

25   And as best as I understand, the vast majority of the

DBLBBITH   Gallancy - direct

1   equipment that is currently deployed in the bitcoin mining

2   network is not 28-nanometer equipment, but, in fact, equipment

3   that is further back. Now, you can't know for certain, but the

4   reason I say what I've said is because only very recently have

5   you seen the appearance of 28-nanometer equipment.

6   The other thing is, I should add, the proposition that

7   28-nanometer equipment is sort of the bee's knees doesn't make

8   that much sense. If you look at, like, the biggest foundry

9   company in the world, which is Taiwan Semiconductor, some 70 --

10   seven-zero -- percent of their revenue is from technology

11   that's -- air quotes here -- legacy, which is not 28 nanometer.

12   It's 45, 65, 110, et cetera, et cetera.

13   Q. But isn't it better-- essentially the defense has said that

14   they're unable to mine because they are facing all this

15   28-nanometer competition, more or less.

16   Isn't it better to mine with the 28-nanometer

17   chipsets?

18   A. Not necessarily. So that's the other thing that I think is

19   strange. It depends on a variety of factors. The first is

20   what you'd pay for that equipment. Right? And, also, the

21   price of bitcoins. It depends on a variety of variabilities

22   and a variety of inputs.

23   It's sort of like saying is it necessarily best to

24   buy the most advanced-- is it necessarily best to buy a brand

25   new car? Not necessarily. A used car will get you from Point

DBLBBITH   Gallancy - direct

1   A to Point B. It might not be as attractive on the road, but

2   it will still do the job. So it's really a matter of

3   sufficiency.

4   Q. Have there been any unexpected and/or disruptive changes in

5   technology in the bitcoin industry that will prevent bitcoin

6   mining from occurring?

7   A. No.

8   Q. Is the same algorithm in place, SHA-256, that has been in

9   place the entire time for the bitcoin protocol, if I'm phrasing

10   that correctly?

11   A. Yes. SHA-256 was contemplated from the very beginning. It

12   has been used from the very beginning. It was actually, from

13   my understanding, invented by the NSA several years ago and it

14   has been used in bitcoin mining since its inception in 2009.

15   And all of the chips -- be they 28 nanometer, 65 nanometer, 110

16   nanometer, regardless -- all run the same SHA-256 algorithm.

17   They all do the same thing.

18   THE COURT: What is the NFA?

19   THE WITNESS: I'm sorry, your Honor. The NSA,

20   National Security Agency.

21   THE COURT: Oh, NSA.

22   THE WITNESS: Sorry about that.

23   THE COURT: Good God, I hadn't realized we got them

24   into this.

25   MR. REYHANI: We got everyone involved.

DBLBBITH   Gallancy - direct

1   THE WITNESS: I'll try to keep them out. Sorry.

2   THE COURT: I should think.

3   Q. And that chip, the SHA chip, is what would run on this

4   stick that I presented to Mr. Olsen earlier. Correct?

5   A. Yes, for sure.

6   Q. Can any other algorithms besides SHA-256 be used for

7   bitcoin mining?

8   A. No.

9   Q. So if the same algorithm has been used, is it fair to say

10 that the technology behind bitcoin is exactly the same?

11 A. Yes.

12 Q. If you were given the task to mine bitcoins using your best

13 efforts, what would you do?

14 A. Well, there are a lot of options. The first thing I would

15 probably do, if I wanted to get it done pretty quickly, is I

16 would simply go out to the market and contract with third

17 parties. And you could do that very easily by, say, putting up

18 a website and saying I'm offering to pay you money to mine

19 bitcoins for me. And you could do that in, I don't know, a

20 couple of hours.

21 Q. How many miners would you guess exist?

22 A. Individual miners?

23 Q. Yes.

24   MR. TOWNSEND: Objection; calls for speculation.

25   THE COURT: Overruled.

DBLBBITH   Gallancy - direct

1   A. Thousands. Hundreds-- likely thousands.

2   Q. All right.

3   A. I can actually say it's actually not entirely speculative

4   because some of the order books for mining equipment companies

5   are sort of known on-line, on websites where people post their

6   orders. So it's likely in the thousands.

7   Q. Okay. Are you friendly with any miners?

8   A. Yes, I am.

9   Q. How do they go about their mining?

10 A. Multiple ways. One of them has both his own mining

11 equipment in his custody, in his possession, and he does it

12 sort of on site. And that person also has a host of mining

13 contracts as well. So he's done two different things and they

14 both work out nicely for him and he's actually quite

15 profitable.

16 Q. So he --

17 A. And he's one person, just one guy.

18 Q. So that one person, his on-site equipment, where does that

19 sit?

20 A. I believe in his office.

21 Q. All right. And you mentioned the contracted-out portion of

22 it. So he's paying a third-party miner to mine bitcoins for

23 him?

24 A. Yes.

25 Q. All right. To your knowledge, has Coinlab attempted to

DBLBBITH   Gallancy - direct

1   procure the services of any third-party miners to deliver

2   bitcoins to Bitvestment?

3   A.   They've certainly not apprised me of anything like that,

4   no.

5   Q.   Let's say Coinlab went out to the market and procured the

6   services of third-party miners. Would that enterprise be

7   profitable?

8   A.   Well, you never know for sure. I say this putting my

9   analyst hat on for a second. You never know for sure what will

10   be profitable in advance. Nobody can know. But certainly

11   there are many miners who are profitable. There's some miners

12   who are not. It's like any sort of-- any set of businesses out

13   there. There are going to be players: Players who are less

14   profitable, players who are unprofitable.

15   But, yes, there's certainly a possibility to make a --

16   there's definitely a possibility to make a profit; otherwise,

17   the industry wouldn't exist.

18   Q.   And as the price of bitcoin goes up, the chances of that

19   profitability increases. Correct?

20   A.   Tremendously so. So the one factor that I feel like people

21   aren't talking about very much is-- and I don't regard it as a

22   bubble and I don't think Coinlab could regard it as a bubble

23   either, because their whole nature is being involved in bitcoin

24   systems. They believe in it as well.

25   Now that the price of bitcoin has gone up sixfold,

DBLBBITH   Gallancy - direct

1   some huge amount, that basically increases your revenue as a

2   miner that much. So actually there are very few businesses

3   that I can think of as an analyst where you have this amazing

4   opportunity for your revenue on a U.S. dollar basis to increase

5   7x, some enormous number. To the extent that bitcoin continues

6   to be adopted, that curve will continue.

7   Q. And would you agree with me to say that bitcoin mining is

8   still in its infancy?

9   A. Yeah.

10 Q. It's just now hitting the mainstream more or less?

11 A. I mean, I would say-- I think that's a fair statement, yes.

12 Q. All right. Yesterday the defendants showed a financial

13 analysis for making purchases of mining equipment or capacity

14 from three vendors.

15   Do you understand why Mr. Vessenes has concluded that

16 none of those purchases would be viable?

17 A. No, I don't understand that.

18 Q. Why are you unable to understand that?

19 A. Because, yes, I am a financial analyst and, yes, I partake

20 in that industry. But what I was shown yesterday wasn't really

21 a financial analysis. It wasn't the work of a-- it wasn't the

22 work product that a financial analyst would really put

23 together. It was really just a set of input numbers and

24 conclusions and there's nothing in between. It's as if you

25 were to give me just two numbers, the input and the output. I

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1   have no idea how you got there so I have no idea what the other

2   assumptions in the model are.

3   Anyone can make a model that shows a lack of

4   profitability just by plugging in whatever assumptions they

5   want. So it was really just a piece of paper with two numbers

6   on it.

7   Q. Are there other ways that Coinlab could go about achieving

8   its goal of mining bitcoins?

9   A. Yes, there are many ways. I mean, I could list some of

10 them for you. There are manufacturers of mining equipment,

11 both enterprise grade and what they would call retail grade,

12 although I think the lines are becoming blurred. I know of at

13 least eleven such manufacturers off the top of my head that I

14 locked at recently.

15 Q. Okay. And --

16 A. There are probably more than that.

17 Q. And aside from going out to such manufacturers and such

18 vendors, what are the other ways that Coinlab could go about

19 complying with the terms of the contract?

20 A. Coinlab could comply with the terms of the contract simply

21 by reaching out to other miners and saying, hey, I need you to

22 mine these bitcoins for me.

23   There's also hosted mining, which is one of the

24 things we discussed. You could link up with mining pool

25 operators, and mining pool operators get a cut of some of the

DBLBBITH   Gallancy - direct

1 proceeds. And that's one way to do it. There are lots and

2 lots of ways to go about it.

3 Q. And if Coinlab contracted with any of these hosted mining

4 services or any third party, would that require Mr. Vessenes or

5 Mr. Olsen to be out of the office, not being able to tend to

6 Alydian's matters?

7 A. No. They make a phone call or two or go on the internet.

8 No, it would require very, very little monitoring and effort.

9 They just basically have to pay the monthly bill.

10 Q. How many vendors-- yesterday the defense presented a

11 situation where they're talking about the risk of equipment

12 catching on fire.

13   Would the defendant be subject to such a risk if they

14 bought a hosted mining contract?

15 A. No. No, hosted mining is done off premises, so it wouldn't

16 be on Coinlab's premises. Coinlab would not be at risk of some

17 sort of fire.

18 Q. How many vendors about which you're aware offer a hosted

19 mining service?

20 A. Probably about half a dozen, but there might be more than

21 that.

22 Q. Yesterday Mr. Vessenes testified that he had no idea how

23 many bitcoins had been mined between the date of the issuance

24 of the TRO and his testimony yesterday afternoon.

25   Are you aware between the signing of the TRO and

DBLBBITH   Gallancy - direct

1   yesterday at noon how many bitcoins had been mined by bitcoin

2   miners?

3   A.   Yes, 62,925.

4   Q.   Okay. So approximately 63,000?

5   A.   Yes, sir.

6   Q.   Okay. And how do you know that?

7   A.   It's publicly available knowledge that you can go on the

8   internet and figure out. We just look at the number of blocks

9   mined at the time of the signing of the TRO and then look at

10   the number of blocks mined at the time of yesterday at noon, is

11   what you said, and you'd subtract and multiply by 25 and that's

12   it. It's as simple as that.

13   Q.   If Coinlab utilized efforts to go about entering into one

14   of these mining contracts or going to any other third party to

15   procure their services to mine bitcoins, in your opinion what's

16   the probability that they would have delivered any bitcoin to

17   you by now?

18   A.   A hundred percent.

19   Q.   And how do you know that?

20   A.   If you contract with one of these outsourced mining

21   providers or if you contract with miners directly or if-- you

22   bring up contracting. You could say that Alydian could be a

23   subcontractor to Coinlab. You could use any subcontractor and

24   give them any money, they could provide bitcoins that day.

25   Within hours, I mean.

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1   Q. Since we've heard testimony that Coinlab itself doesn't

2   mine, if Coinlab contracted with Alydian to mine your bitcoins

3   consistent with whatever is necessary in the bankruptcy court

4   proceeding, wouldn't that be Coinlab contracting with a third

5   party to mine bitcoins for it?

6   A. Yes. That's exactly it. So to be clear on that, any

7   fulfillment-- the idea of contracting with a third party is not

8   sort of a new idea. The idea that if Coinlab were to use

9   Alydian as its miner, it would indeed be using it. It would be

10   an affiliated party, but a third party.

11   Q. I want to discuss the bubble that was mentioned earlier.

12   A. Actually, I didn't finish. I should have answered your

13   question more clearly. That's one way they could do it, or

14   Coinlab could also do it directly. They don't have to contract

15   with a third party. They have a choice. I didn't demand that

16   they do one or the other.

17   Q. All right. I want to talk about the bubble that was

18   mentioned earlier for a second and the increase in hash rate.

19   Could you explain how it affects returns versus the

20   change in price of a bitcoin?

21   A. Yes. So hash rate, of course, has increased. It's

22   increased basically consistently for the past several months.

23   That's for sure true. So that means that any particular

24   bitcoin miner will receive fewer bitcoins for the same amount

25   of computing power that they put in, just as Mr. Olsen

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1   testified.

2   But the flip side of that is if you wished to sell

3   those bitcoins, collect the U.S. dollars for selling them, you

4   would now have seven times the amount of U.S. dollars that you

5   had before and you could redeploy that into more mining

6   equipment or do whatever you wish with it. Or most businesses

7   look at themselves on a profitability basis on U.S. dollars or

8   some other sort of conventional currency, and in that case your

9   enterprise could be tremendously profitable.

10   Q. We spoke a little yesterday, Mr. Vessenes testified about

11   the risk of a cyber attack on the bitcoin network. If the

12   bitcoin network were attacked, would that be an issue in terms

13   of mining?

14   A. Yes, that would be basically the end of bitcoin. Depending

15   on the type of attack, could result in either the end of

16   bitcoin altogether or it could result in-- it would be very

17   bad. The scenarios painted, contemplated, would be

18   extraordinarily bad for bitcoin and, in many cases, completely

19   unrecoverable.

20   Q. How would such a cyber attack occur?

21   A. It's not that hard. All that's required is-- and we

22   touched upon this yesterday in terms of what the purpose of

23   mining -- one of the purposes of mining in terms of securing

24   the network. So an attacker that would have 51 percent or more

25   than 50 percent of mining capacity could launch just this sort

DBLBBITH   Gallancy - direct

1   of attack by putting all their capacity on-line at once and

2   that would enable them to do a couple of things: First of all,

3   it would enable them to basically steal bitcoins essentially;

4   or, if they really wanted to, if they were a malicious attacker

5   and wanted to destroy the system, they could basically do an

6   attack where they'd put all the computing power on line all at

7   once and then take it off-line and then basically do a bunch of

8   stuff to render bitcoin transactions unable to clear. So

9   basically destroying the ability of bitcoin transactions to get

10   confirmations.

11   Q. All right. How much would it cost to launch a cyber

12   attack?

13   A. So not that much money in the grand scheme of things.

14   Probably on the order of magnitude of $20 million.

15   Q. Okay.

16   A. Something like that.

17   Q. So if a country like China, for example, wasn't really

18   happy with bitcoins being used in their country, they

19   themselves, as an example, could launch a cyber attack and

20   bring down the entire bitcoin network?

21   A. Yes. And China's a very interesting example because China

22   has significant capital controls, and one of the things that

23   one can do with bitcoin is get around those capital controls.

24   They probably aren't too thrilled about that and actually their

25   cost would probably be even lower because they could basically

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1 just order some government-sponsored entities to just do it.

2 Q. Yesterday Mr. Vessenes equated a cyber attack on the

3 bitcoin network to be akin to a cyber attack on bringing down a

4 Visa or MasterCard, or words to that effect.

5   Is that true?

6 A. It's not the same thing. I mean, people try to obviously

7 hack into Visa or MasterCard all the time and it's a

8 recoverable situation, because Visa and MasterCard are

9 companies and they eventually solve the problem and fix it.

10 And they're dealing in U.S. dollars which are backed ultimately

11 by the U.S. government. If bitcoin were cyber attacked,

12 there's no way necessarily to recover. That's the end. It's

13 good-bye.

14 Q. And is this a known issue in the bitcoin network?

15 A. Yes. It was actually discussed in the original White Paper

16 that described the bitcoin protocol. So this 51 percent

17 attack, so to speak, is actually contemplated in that paper.

18 So it's a known issue.

19 Q. And have you had conversations about this potential issue

20 with the defendants?

21 A. I have.

22 Q. In particular, Mr. Vessenes?

23 A. I have.

24 Q. And Mr. Vessenes has made public statements regarding that

25 issue as well?

1   A. Yes, at the bitcoin conference in May, the conference

2   sponsored by the Bitcoin Foundation through which Mr. Vessenes

3   is the former chairman, I believe. He was on a security panel

4   and he discussed precisely this issue of the potential for a 51

5   percent attack to happen. I think he described it as-- he

6   described it as totally doable.

7   Q. Are there others that agree with this potential risk?

8   A. Many others. On that panel, the one that sticks out is a

9   guy named Dan Kaminsky, who is kind of this famous --

10   MR. TOWNSEND: Objection, your Honor. Calls for

11   hearsay.

12   THE COURT: Overruled.

13   Q. You can answer.

14   A. This guy Dan Kaminsky, who's a famous security researcher,

15   and kind of very well known in the security community. And

16   his quote on that same panel is also on the same YouTube clip

17   is, quote -- I'm paraphrasing because I don't remember his

18   exact words -- but I don't expect the proof of work function

19   to last through the end of the year. So he was basically

20   saying that he would expect something massive to happen by the

21   end of 2013 unless-- I don't know what unless. But he was

22   extremely concerned and quite animated on the panel in

23   discussing this.

24   Q. Okay. If an attack occurred, what would happen to

25   bitcoin?

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1   A. There are a lot of scenarios, but one of the scenarios

2   that's pretty easy to envision is that bitcoin would

3   essentially be rendered completely useless. So bitcoin would

4   kind of just go away or be rendered obsolete or-- "obsolete" is

5   not really the right word. Be rendered inoperable. That would

6   be the end, kind of curtains, for bitcoin. And also curtains,

7   therefore, for bitcoin mining.

8   Q. Why did you on behalf originally of yourself and also Dalsa

9   Barbour/Bitvestment, why did you enter into a contract with

10   Coinlab to mine bitcoins?

11   A. Because Mr. Vessenes represented to me on multiple

12   occasions that he would be 90 -- nine-zero -- percent of

13   network capacity. He did this -- that was, in a sense, the

14   sales pitch.

15   Q. Did he say it once?

16   A. He said it multiple times. We had conversations about it

17   in which he said -- basically he talked about whether or not

18   he wanted to disclose it to the world or whether or not he

19   wanted to keep it a secret. He gave the analogy of, like,

20   South Africa developing nuclear weapons and then sort of just

21   disclosing it to the world and then that sort of makes it safer

22   to do. Yes, he said it multiple times.

23   Q. Okay.

24   A. And I believed him because it was not at the time at all--

25   it was not an undoable thing. It was entirely doable at the

DBLBBITH   Gallancy - direct

1   time.

2   Q. Okay. You'll recall from yesterday's testimony that we

3   discussed a couple of addresses where Coinlab's or Alydian's

4   bitcoins were held.

5   Do you recall listening to that?

6   A. Yes, sir.

7   Q. And do you recall defense counsel making a representation

8   to your prior counsel that there were two addresses that

9   Coinlab -- although it changed yesterday to Alydian -- held

10   bitcoins? Correct?

11   A. Yes, sir.

12   MR. TOWNSEND: Objection, your Honor. This is the

13   same testimony that the Court declined to enter into evidence

14   yesterday.

15   THE COURT: Overruled.

16   Q. For the sake of ease, one address that was represented to

17   you started with 18 and --

18   THE COURT: Well, no, these were in the settlement

19   discussions. Correct?

20   MR. TOWNSEND: Yes, your Honor.

21   THE WITNESS: No, sir.

22   MR. REYHANI: No.

23   THE COURT: Well, wait a minute, folks. What was the

24   context in which you had these conversations?

25   THE WITNESS: Your Honor, my contract entitled me to

DBLBBITH   Gallancy - direct

1   full audit rights of the defendant, so I requested information

2   regarding their bitcoin output in compliance with those audit

3   rights. I was provided with those two addresses in compliance

4   with that audit rights request.

5   THE COURT: When?

6   THE WITNESS: I don't remember the exact date, but --

7   THE COURT: Well, roughly.

8   THE WITNESS: I believe it was in October, sir.

9   THE COURT: Thank you.

10   MR. TOWNSEND: Your Honor, the piece of evidence that

11 we were referring to yesterday was specifically declined to be

12 entered with the Court because it was included in settlement

13 discussions. Your Honor rejected that and now we're going over

14 it again and it's the same communication.

15   MR. REYHANI: Mr. Vessenes testified about the two

16 addresses.

17   THE COURT: Overruled.

18 BY MR. REYHANI:

19 Q. So you'll recall that there was a representation that

20 Mr. Vessenes testified about the two addresses yesterday, that

21 were purportedly Alydian's addresses, that started with 18AQ

22 and the other one that started with 1G3C.

23   Do you recall that testimony?

24 A. Yes, sir. Those addresses were explained to me to be

25 Coinlab. Not Alydian, but Coinlab addresses.

DBLBBITH   Gallancy - direct

1   Q. Okay. And if you'll recall, in your affidavit you set

2   forth some information that was retrieved from the internet

3   that showed bitcoins being transferred out from 18AQ and 1G3C

4   into another account that was 12zZ.

5   A. Yes, sir.

6   Q. And all of this information is publicly available?

7   A. Yes. The nature of the bitcoin network enables you to

8   trace transactions from one account to the other just by

9   looking at a website. It's extremely easy to do and readily

10 publicly accessible.

11 Q. And you'll recall from those exhibits to your affidavit

12 that certain of those transfers occurred on October 29th?

13 A. Yes, sir.

14 Q. And do you recall that certain of those transfers occurred

15 at around 1630, in terms of time of day?

16 A. Yes, sir.

17 Q. And is 1630 New York or is it Greenwich Mean Time? Are you

18 aware?

19 A. I believe that to be Greenwich Mean Time.

20 Q. So that's about one o'clock in the afternoon, 1:30 in the

21 afternoon New York time?

22 A. I believe so, yes.

23   MR. REYHANI: May I approach?

24   THE COURT: Yes.

25 Q. Could you explain to the Court the document that I've

DBLBBITH   Gallancy - direct

1   presented to you?

2   A.   Yes, sir. It shows the transaction-- shows the transaction

3   going into that-- that 12zZ address that you referred to for

4   10,000 bitcoins.

5   Q.   Okay.

6   A.   And it has --

7   Q.   Let's discuss the website first. What is this document in

8   general?

9   A.   It's a screenshot of a website called Blockchain.info,

10 which enables anyone to look at any bitcoin address around the

11 world, you know, whatever you want to do, and to see the

12 transactions that have occurred to and from that address.

13 Q.   Okay. And in the middle I've highlighted to speed things

14 along. That 12zZ address is the same 12zZ address that

15 received the --

16   MR. TOWNSEND: Objection, your Honor. This hasn't

17 been entered into evidence.

18   THE COURT: True.

19   MR. REYHANI: I was planning on admitting it after he

20 testified about it. We would submit it now if your Honor would

21 indulge us.

22   MR. SANTORI: At which point we would voir dire the

23 witness and likely object because this is hearsay, your Honor.

24   THE COURT: Be my guest.

25   MR. SANTORI: Thank you.

DBLBBITH   Gallancy - direct

1   VOIR DIRE EXAMINATION

2   BY MR. SANTORI:

3   Q. Mr. Gallancy.

4   A. Yes?

5   Q. Did you create this document?

6   A. No, I did not.

7   Q. How did you get it?

8   A. My attorney printed it out and handed it to me.

9   Q. Oh, I see. So is this the product of your attorney's

10   research?

11   A. No. I told him the web address to go to based upon tracing

12   transactions to the Blockchain, which is a very readily doable

13   thing, as you know.

14   Q. Is this your website?

15   A. This is not my website. It's Roger-- I shouldn't say whose

16   website it is because I actually don't know whose website it

17   is.

18   Q. Are you in the business of running websites?

19   A. I actually have run websites, yes.

20   Q. Are you in the business of running this website?

21   A. No, I'm not in the business of running this website, but

22   this website contains information that's publicly and readily

23   available through the Blockchain, as you know. It's all very

24   readily known because the Blockchain is a public ledger. In

25   other words, you wouldn't have to use this website to obtain

DBLBBITH   Gallancy - direct

1   this information. The information is all available on Block

2   Explorer. It's all well known and publicly available.

3   MR. SANTORI: I'd have to object to this as hearsay

4   and not falling into any exception.

5   THE COURT: Overruled.

6   MR. REYHANI: Your Honor, we'd like to offer this into

7   evidence as Plaintiff's Exhibit 1.

8   THE COURT: It's admitted.

9   (Plaintiff's Exhibit 1 received)

10   BY MR. REYHANI:

11   Q. So we were discussing the 12zZ address.

12   Is the 12zZ address that's highlighted for you in the

13   middle of the page the same 12zZ address that accepted about a

14   thousand bitcoins from the two Coinlab addresses that was

15   discussed yesterday afternoon?

16   A. Yes. I don't remember the exact number of bitcoins that

17   were transferred, but, yes, that is the address.

18   Q. How many bitcoins are being transferred into that 12ZZ

19   address?

20   A. In this transaction that I'm shown, it's 10,000, or

21   10,000.00000001.

22   Q. Okay. We can go with 10,000.

23   And what is the time and date of such transfer?

24   A. It's October 29th at 1637, which I believe to be Greenwich

25   Mean Time.

DBLBBITH   Gallancy - direct

1   Q. So that 1637 -- which is about 1:30 in the afternoon

2   here -- is just a few minutes after the two transactions that

3   we were discussing yesterday. Correct?

4   A. Yes, sir.

5   Q. Okay. I'd like to show you another document, if I may. Is

6   this similar information from the same website?

7   A. Yes, sir.

8   Q. Okay. And here the address is the same 12zZ address that

9   we were discussing a moment ago?

10 A. Yes, sir.

11 Q. And how many total bitcoins are sitting in that address, if

12 you can tell?

13 A. 15,101.29024042.

14 Q. Okay.

15   MR. SANTORI: Your Honor, we have to enter the same

16 objection as before. He's just reading from a document that

17 hasn't been entered into evidence. I presume if Mr. Reyhani

18 wants to enter it into evidence, we would object on the same

19 grounds.

20   MR. REYHANI: We offer it into evidence, your Honor,

21 as Plaintiff's Exhibit 2.

22   MR. SANTORI: And we object on the same grounds as

23 before, that this is hearsay.

24   THE COURT: Overruled. It will be admitted.

25   (Plaintiff's Exhibit 2 received)

DBLBBITH   Gallancy - direct

1   BY MR. REYHANI:

2   Q. So there's 15,100 and change of bitcoins that are sitting

3   in the 12zZ account?

4   A. Yes, sir.

5   MR. REYHANI: Nothing further at this time.

6   THE COURT: Let me just ask you, is it your view

7   that-- what is the -- you mentioned 62,925. Is it your view

8   that that is what has been mined by Alydian?

9   THE WITNESS: No. No, your Honor.

10   THE COURT: What is that number?

11   THE WITNESS: That's the number of bitcoins that have

12   been mined globally.

13   THE COURT: Oh, okay. All right.

14   THE WITNESS: So --

15   THE COURT: So it is your position that somebody --

16   and you believe it to be, based on the testimony here, you

17   believe it to be Alydian -- has 15,000 bitcoins.

18   THE WITNESS: I believe it to be Coinlab, not Alydian.

19   But, yes, I do believe that they are in possession.

20   THE COURT: Okay. Thank you.

21   Anything?

22   MR. TOWNSEND: One moment, your Honor.

23   THE COURT: Sure.

24   THE WITNESS: Your Honor. Your Honor. I apologize

25   for the writing on the bottom of this. I didn't put that data.

DBLBBITH   Gallancy - direct

1   That's put in the Blockchain by --

2   MR. REYHANI: If I may actually have one more

3   question. I apologize.

4   THE COURT: Okay.

5   MR. REYHANI: My fault.

6   BY MR. REYHANI:

7   Q. So on Plaintiff's Exhibit 1, if I could turn your attention

8   back to that, that's the one that shows the 10,000 bitcoins

9   going into the 12zZ account?

10   A. Yes, sir.

11   Q. Underneath that, there's a public note. It says, "Hi. My

12   name is Preet Bharara and I'm a homeless Indian junkie. I'm

13   accepting donations to buy crack for me and my ugly wife.

14   Please help me. Thank you."

15   What is that?

16   A. So this is what I was trying to-- I didn't want to offend

17   the Court by showing him this, but this is information that is

18   embedded in the Blockchain likely by the defendant, as they are

19   the ones who sent these coins to this address. It's

20   basically-- you have this way of putting information into a

21   transaction beyond the transaction itself. And the information

22   that was put into this transaction is this public note, so to

23   speak.

24   Q.   Okay. So irrespective of who actually inputted, somebody

25   had to affirmatively take the time to input this into the

DBLBBITH   Gallancy - direct

1   Blockchain?

2   A. Yes.

3   Q. And do most people know how-- do most miners know how to do

4   it or is there a different level of sophistication with regards

5   to it?

6   A. Well, basic miners who are kind of just mining for fun

7   probably aren't embedding things into the Blockchain. You have

8   to have a certain level of technical sophistication to embed a

9   message into a transaction. The regular bitcoin QT client that

10   is like the original client doesn't let you really do that

11   through the graphic user interface. You'd have to have a

12   certain level of technical savvy to make it happen.

13   Q. And none of the other transactions that we saw on either

14   one of the exhibits, Plaintiff's Exhibit 1 or 2, have that

15   note. Correct?

16   A. No, sir.

17   Q. Okay. Thank you.

18   MR. REYHANI: I have nothing further.

19   CROSS-EXAMINATION

20   BY MR. TOWNSEND:

21   Q. Mr. Gallancy, you testified earlier that you had a friend

22   or associate that currently provided a hosted service where you

23   could contract with them and they would mine bitcoins for you.

24   Right?

25   A. No, that is not actually what I said. What I said is I

DBLBBITH   Gallancy - cross

1   have a friend who is using such a service.

2   Q. Who's your friend?

3   A. His name is Ivan.

4   Q. Ivan? Can you spell hit last name?

5   A. Ivan Brightly. I believe it's B-r-i-g-h-t-l-y, I think.

6   Q. Who is he contracting with?

7   A. I believe KnCMiner.

8   Q. KnCMiner?

9   A. I believe so, yes. I'd have to ask him, but yes.

10   Q. When did he start doing that?

11   A. Fairly recently.

12   Q. Can you be more specific?

13   A. I didn't ask him the exact date, but it was fairly recent

14   because we were discussing it fairly recently and he wasn't

15   doing that before.

16   Q. Okay. So it was within the last week?

17   A. I don't think it was within the last week. It was probably

18   within the last-- I honestly don't know the specific date. My

19   suspicion is it's within the last two or three weeks, but I

20   don't know the specific dates, sir.

21   Q. Sure. And how much has he paid KnCMiner?

22   A. We didn't discuss the specific payment arrangements of his

23   transaction.

24   Q. So you don't know how much he's paid?

25   A. I don't know how much he's paid, but one can look it up on

DBLBBITH   Gallancy - cross

1   the internet because that sort of information is available. I

2   had a conversation with, long ago, the head of KnCMiner and you

3   could get him on the phone and negotiate deals with him.

4   Q.   And who is the head of KnCMiner?

5   A.   One of the guys is a guy named Sam Cole.

6   Q.   Can you spell that?

7   A.   I think it's just S-a-m C-o-l-e.

8   Q.   Okay. And do you know how many bitcoins Mr. Brightly has

9   mined?

10 A.   I don't know off the top of my head, sir, no.

11 Q.   So you don't know whether he spent more than he received.

12 Right?

13 A.   I don't know whether he spent more than he's received, but

14 I know that he engages in mining.

15 Q.   Okay. And would you approve Coinlab spending money on KnC

16 in advance to go mine bitcoins?

17 A.   Would I approve it?

18 Q.   Yes, today.

19 A.   Sure.

20 Q.   And would you approve the capital and operational

21 expenditures to be paid for out of the bitcoins money?

22 A.   Well, with the arrangement that you were just describing,

23 the host mining, there are no capital and operational

24 expenditures in that context. It's a mining contract where you

25 just pay like a -- I think it's a monthly fee or whatever it

DBLBBITH   Gallancy - cross

1 is. So --

2 Q. So it's free?

3 A. No, no. I just said you pay a monthly fee.

4 Q. Okay. And what if the costs, whatever they may be, are--

5 do you know-- you've testified that you don't know whether the

6 costs exceed or are less than the revenue associated with

7 that, but would you approve Coinlab spending money on KnC

8 without knowing whether it would be a net and a positive cash

9 flow?

10 A. I would in this instance for two reasons: Number one, the

11 whole idea behind Coinlab, if I understand, is that it's a

12 bitcoin incubator and, therefore, they continue to believe that

13 the price of bitcoin will go up and, therefore, even if the

14 bitcoins they receive today are only worth "X" dollars and if

15 that "X" dollars is below their cost for the mining, if you

16 were to hold on to those bitcoins, they would be worth a lot

17 more later on.

18 Q. So your belief is that Coinlab is long on bitcoins?

19 A. That's not what I said, no, sir.

20 Q. Is that your belief?

21 A. When you say "long on bitcoins," can you please explain?

22 Q. What does that mean to you, long on bitcoins, to be long on

23 an investment?

24 A. To be long an investment.

25 Q. Say that again.

DBLBBITH   Gallancy - cross

1   A. Okay, I understand. I think that's two separate

2   questions. I believe that Coinlab does, indeed, possess

3   bitcoins, yes, sir.

4   Q. Yes.

5   A. And I also do believe that Coinlab's business plan -- and

6   actually Mr. Vessenes had stated to me bitcoins' (sic) original

7   strategy, so to speak, is to have bitcoins and then work within

8   the ecosystem to encourage the value of those bitcoins to

9   increase.

10   Q. And, in fact, you believe that Coinlab has 15,000 bitcoins.

11   Correct?

12   A. I believe so --

13   Q. At least.

14   A. I believe so, yes.

15   Q. And you believe them to have that today. Is that right?

16   A. I believe so, yes.

17   Q. And you have no knowledge whether those bitcoins were the

18   result of mining or from a direct transaction or other

19   transfer. Is that right?

20   A. Well, I do have some knowledge of that because the input

21   transactions to that 15,000 included those two bitcoin

22   addresses that we were referring to earlier. And those are the

23   addresses at which you, sir, represented to me Coinlab is

24   mining.

25   Q. Right. But we refer to Coinlab generally as including all

DBLBBITH   Gallancy - cross

1 of the affiliated entities, don't we?

2 A. No, sir. In your letter to me, you didn't refer to Alydian

3 even once. You specifically referred to Coinlab. It was

4 specific.

5 Q. Right. But the testimony in court by the actual miners has

6 been that Coinlab hasn't engaged in any mining since, I think

7 it was 2012. Is that right?

8 A. Sir, I can't speak to other people's testimony, but --

9 Q. Well, you were here. Right?

10 A. I'm sorry?

11 Q. You were here. You observed that testimony. Right?

12 A. I was here, yes, sir.

13 Q. Okay. And you testified that someone could hack the

14 bitcoin mining network if they obtained 51 percent of all

15 bitcoin mining capacity. Is that right?

16 A. Yes. Actually recent computer science papers show that

17 it's likely doable with less than 51 percent.

18 Q. Right. But your testimony was 51 percent. Right?

19 A. Yes, sir.

20 Q. And how much does it cost to buy terahash capacity today?

21 A. It depends on how you purchase it and it depends on the

22 mechanism. I've seen costs sort of very overtly in the $5,000

23 range. Those are sort of I guess what you guys would call

24 retail costs, but it's possible to purchase it likely for less

25 than that depending on the arrangements that you make with the

DBLBBITH   Gallancy - cross

1 provider.

2 Q. Well, would you disagree with the assessment that it costs

3 between $30,000 and $120,000 to buy a terahash today?

4 A. I'm sorry? That it would cost between $30,000 and $100,000

5 to buy a terahash?

6 Q. Correct.

7 A. Yes, I would disagree with that assessment.

8 Q. And if the network is-- assume for the sake of argument

9 that it cost $30,000 to buy a terahash.

10 A. Wait.

11 Q. Just for the sake of argument.

12 A. Yes, sir.

13 Q. I understand your testimony is otherwise.

14 A. Yes, sir.

15 Q. And if you needed to buy 51 percent of the bitcoin mining

16 network to hack the network, wouldn't it cost-- again I'm going

17 to make you do math, just like I did Mr. Olsen-- and we're at

18 5,000 terahashes, so therefore you'd have to buy 2,501

19 terahashes times 30,000. Is that right?

20 A. If you were to use your 30-- actually I think your math is

21 in-- well, okay. If we use your 30,000 number, then that's the

22 number you're going to use. I think it's an order of magnitude

23 less than that. It's one-tenth that. But you're actually--

24 you're also actually underestimating the amount of capacity

25 you'd have to get. Because if the network's running at 5,000

DBLBBITH   Gallancy - cross

1   and you were to buy 2,500, that would only put you at a third.

2   So you'd have to gross it up. So there are a couple of

3   things wrong with that math, but I guess I get where you're

4   going.

5   Q. So many, many millions of dollars, right, under my

6   assumptions?

7   A. My estimate is there would be about 15 -- one-five --

8   million dollars. Fifteen, 20. Fifteen, 20, something along

9   those lines depending on how you do it.

10   Q. And you haven't provided any data or detailed financial

11   records which demonstrate that the cost of bitcoin mining would

12   exceed the revenues from bitcoin mining or--

13   A. I have not provided any evidence that the cost of bitcoin

14   mining would exceed the revenue from bitcoin mining.

15   Q. And you haven't provided any financial records

16   demonstrating that the revenue from bitcoin mining ventures

17   would exceed the cost of bitcoin mining. Is that right?

18   A. I have not provided such records. If asked to do so, I

19   would be happy to build a model.

20   Q. Right. Well, you know it's your burden of proof here

21   today. Right?

22   A. Is it my burden of proof?

23   MR. REYHANI: Objection; calls for a legal

24   conclusion.

25   THE COURT: Sustained.

DBLBBITH   Gallancy - cross

1   Q. And is it your position that you can direct Coinlab to

2   engage in a bitcoin mining enterprise where costs exceed the

3   revenue?

4   A. It is my position that Coinlab is obligated to mine for me

5   7,984-odd bitcoins.

6   Q. Right, less approved operational and capital expenditures.

7   Correct?

8   A. If approved by both parties, indeed so. If approved by

9   both parties.

10 Q. Right.

11   And so does that lead you to conclude that you can

12 compel under the contract for Coinlab to engage in a

13 money-losing enterprise?

14 A. I'm not asking Coinlab to do anything except for mine the

15 7,984 bitcoins.

16 Q. Right.

17   Can you answer that question, though, the question I

18 asked?

19 A. Ask it again, please.

20 Q. Do you believe under the contract that you can compel

21 Coinlab to engage in a business enterprise in which the costs

22 exceed the revenue?

23 A. If the costs exceed the revenue for Coinlab to mine the

24 7,984 bitcoins, that's unfortunate, but I believe that

25 ultimately they can achieve the goal of mining those

DBLBBITH   Gallancy - cross

1   bitcoins.

2   Q. Okay. You still haven't answered the question. Do you

3   believe-- and I'll ask it a third time.

4   Do you believe that you can compel Coinlab to engage

5   in a business enterprise in which the costs exceed the

6   revenues?

7   MR. REYHANI: Objection; asked and answered.

8   THE COURT: Overruled.

9   A. If the costs exceed the revenues for a time, then, yes. If

10   that's required in order to fulfill the contract, then, yes.

11   For a time that may be the case, just as for any start-up at

12   the time, in the beginning, the costs may exceed the revenues.

13   That happens with most start-ups.

14   Q. And what also happens with many start-ups, as Mr. Reyhani

15   elicited earlier, a lot of them fail. Right?

16   A. Many fail, yes.

17   Q. All right.

18   A. Many succeed as well.

19   Q. Right.

20   More fail than succeed, though, right, just like the

21   restaurant business?

22   A. More fail than succeed, yes.

23   Q. And you knew when you were investing in-- strike that.

24   You knew when you became a customer that you were

25   engaged in a speculative start-up. Is that right?

DBLBBITH   Gallancy - cross

1   A.   No, sir. Actually, when I became a customer, I was not

2   engaging in a speculative start-up. I was a customer of what I

3   understood would be a well-capitalized business where the

4   defendant represented to me that he would be 90 percent of

5   network capacity and that he was backed by guys like Tim

6   Draper.

7   Q.   But you knew there was a risk that the start-up would fail.

8   Right?

9   A.   There's a risk that any business would fail, sir.

10   Q.   Right.

11   I'd like to ask you about this kind of inflammatory

12   language in the bitcoin address.

13   I'd like to sort of avoid recalling another witness,

14   but do you really believe that this was the language of one of

15   the people in this courtroom?

16   A.   I believe so.

17   Q.   And upon what basis do you believe that?

18   A.   The timing of the transaction and the transaction

19   destination.

20   Q.   Okay. But I'm talking about this Indian situation.

21   A.   Yes, that's what I'm talking about.

22   Q.   Okay. And you don't believe that this can be just added

23   through a button on the Blockchain website?

24   A.   I don't believe it can be added through a button on the

25   Blockchain website, no, sir.

DBLBBITH   Gallancy - cross

1   Q. All right. You testified yesterday that you believe that

2   you could sell 8,000 bitcoins in the bitcoin network today. Is

3   that right?

4   A. That I could sell 8,000 bitcoins in the bitcoin network?

5   Q. Or on a bitcoin exchange today. Right?

6   A. You could sell 8,000 bitcoins on a bitcoin exchange today,

7   yes, sir.

8   Q. Or you could transfer that to an individual third party for

9   currency today probably. Right?

10   A. If you so wished, yes, sir.

11   Q. Right.

12   A. Well, over-the-counter transactions of that size become

13   sort of cumbersome to do, but, hypothetically, yes.

14   Q. Right.

15   So if you were to ultimately prevail in this case and

16   establish that today you are entitled to 7,900 bitcoins, we

17   would be able to determine what the dollar value of those

18   bitcoins were today, couldn't we?

19   A. Changes minute by minute, but you could determine it at any

20   particular one second, yes, although there are some

21   complexities behind that because there are special things

22   that you could do with bitcoin that you can't do with regular

23   money.

24   Q. Right.

25   But you could turn them into money. Right?

DBLBBITH   Gallancy - cross

1 A. You can turn them into money, just as you could turn a car

2 into money by selling it, yes, sir.

3 Q. Right.

4   MR. TOWNSEND: One second, your Honor.

5   (Pause)

6   MR. TOWNSEND: Just one further question.

7 Q. This USB, did you purchase this?

8 A. I did, sir.

9 Q. And how much did you pay for it?

10 A. I believe it was $35, maybe $40.

11 Q. And when did you buy it?

12 A. A couple days ago.

13 Q. A couple days ago.

14   And how many terahashes would this give you on it?

15 A. It would give you less than a terahash.

16 Q. Could you be more specific?

17 A. I forget the exact technical specifications of it, but it

18 is less than a terahash, yes.

19 Q. And Mr. Olsen testified earlier regarding how many

20 terahashes. Did it sound like accurate testimony, .0002, I

21 believe it was?

22 A. I believe actually Mr. Olsen gave an estimate as to how

23 many bitcoins it would produce, not the number of terahashes

24 that the device provides.

25 Q. Okay.

DBLBBITH   Gallancy - cross

1   MR. OLSEN: I know those numbers. I don't know

2   that --

3   MR. TOWNSEND: I'm going to be calling you.

4   Okay. No further questions.

5   MR. REYHANI: We have nothing further for this

6   witness. Thank you, your Honor.

7   THE COURT: Thank you, sir. You're excused.

8   (Witness excused)

9   MR. SANTORI: The defendants would like to briefly

10   recall Mr. Vessenes.

11   MR. REYHANI: Are you discussing anything more than

12   those numbers?

13   MR. OLSEN: I will talk about the spam that you claim

14   that I wrote and the terahash rate that you asked Dan about.

15   THE COURT: You're still under oath.

16   THE WITNESS: Thank you, your Honor.

17   PETER JOSEPH VESSENES,

18   recalled as a witness by the Defendants,

19   having been previously duly sworn, testified as follows:

20   REDIRECT EXAMINATION

21   BY MR. SANTORI:

22   Q. Let's continue where Mr. Townsend left off with this USB

23   stick. We were trying to do a little bit of math.

24   A. Could I see it?

25   Q. Sure.

DBLBBITH   Vessenes - redirect

1   MR. SANTORI: May I approach, your Honor?

2   THE COURT: Yes.

3   MR. REYHANI: To speed things along, your Honor, we're

4   willing to stipulate that this is, as we set forth, a very

5   small-- it was just an example. We're willing to stipulate

6   that you would probably need many, many, many of these to

7   operate mining rigs on a large scale. We're not disputing

8   that. We don't need to go into the 000 whatever. I don't

9   think it's relevant to the proceeding, and we're willing to

10   stipulate that you need a lot more horsepower than what's in

11   their chip.

12   MR. SANTORI: We're going to go into a little more

13   than that, but the stipulation is certainly accepted.

14   May I approach?

15   THE COURT: Yes.

16   THE WITNESS: Okay. Thank you.

17   BY MR. SANTORI:

18   Q. Have you had an opportunity to inspect the USB stick?

19   A. Yes. It's an ASICMiner USB Sapphire, is what they call

20   it.

21   Q. Can you tell us a little bit about the specifications of

22   that chip?

23   A. Yeah. So as Hans and Dan both said, this is an older

24   technology. But I think for our purposes -- Roger asked for

25   terahashes. That's trillions of hashes a second. This does

DBLBBITH   Vessenes - redirect

1   333 megahashes a second. That's millions. So it would take

2   3,000 of these to make one terahash. So this is 1/3000th of a

3   terahash.

4   Q. So it would take 3,000 of those to make one terahash?

5   A. Yeah.

6   Q. Okay.

7   A. Go ahead. I'm sorry.

8   Q. And you said those cost --

9   A. I think he said $40.

10 Q. I believe the testimony was between $35 and $40. Shall we

11 call it $35 to --

12 A. Math's easier at $40, but sure.

13 Q. Is it? Okay. So use the high number at 40.

14 A. At $40 times three thousand of these, Dan paid $120,000 per

15 terahash this week. I think that math is pretty easy to do.

16 Q. Could you say that again?

17 A. $120,000 per terahash is what Dan paid for this just a

18 couple days ago.

19 Q. And if you had a terahash, how much of the network would

20 you have?

21 A. You'd have 1/5000th of it today although you'd have less

22 tomorrow obviously.

23 Q. How would I go about using that to mine bitcoins then?

24 A. Well, you'd put this into a pool, although, just to say,

25 you'd never make even your energy costs back from doing that,

DBLBBITH   Vessenes - redirect

1   but --

2   Q. You said you wouldn't make your energy costs back from

3   doing that?

4   A. I don't believe so. I think this takes more electricity to

5   run than it pays for in bitcoins.

6   Q. Okay. So let's assume electricity--

7   A. It's free, let's say.

8   Q. -- is free. How would I go about generating a profit with

9   that?

10   A. I don't think you could.

11   Q. Even if electricity was free?

12   A. Well, you would-- Hans said that this-- I mean, he's, I

13   think, right. It makes .0002 bitcoins a day.

14   Q. Okay.

15   A. And at -- yesterday was $500, today may be more. But at

16   500 the math's easy. That's a tenth of a cent today.

17   Q. Okay.

18   A. So if the network didn't grow, you would need to run this

19   for four thousand days.

20   Q. Do we have any reason to believe that the network will not

21   grow?

22   A. I don't think anyone thinks it won't grow at this point.

23   Q. So to get to eight hundred terahashes that Mr. Gallancy had

24   asked us to do, how much would that cost?

25   A. Well, I would not, obviously, recommend that you do that

DBLBBITH   Vessenes - redirect

1 for a variety of reasons. But you would need 2.4 million of

2 these, right, because there's three thousand per terahash.

3 Although this company is defunct. They went out of business.

4 This is old stock. I don't think you could buy more than a few

5 thousand of these. If you could get them, you would need

6 millions of them.

7 Q. So is that a practicable way to mine bitcoins?

8 A. I don't believe so.

9 Q. Thank you.

10   I'd like to talk about the public note. I admit, I

11 don't understand what this is, so can you explain this to us,

12 the public note?

13   MR. SANTORI: May I approach?

14 A. I've read it, thanks.

15 Q. Okay.

16 A. That's actually a common sort of on-line internet scam

17 right now. Blockchain.info is a website that many people use

18 to look at bitcoin transactions. It's a business run out of

19 England. And they allow to you append anything you want to any

20 transaction. I think you log in and you can go do it.

21   So that particular piece of spam is one that shows up

22 thousands and thousands of times on that website. And I think

23 anyone who used the website frequently would have seen it. For

24 instance, most recently the FBI announced that it owns a bunch

25 of bitcoins and gave their address. If you were to look at

DBLBBITH   Vessenes - redirect

1   that FBI address, that same text appears hundreds of times.

2   Q. Okay.

3   A. So I did not write that text in case you were curious.

4   Q. Okay. Thank you.

5   MR. SANTORI: Nothing further.

6   MR. REYHANI: We have no questions, your Honor.

7   THE COURT: Thank you. You're excused.

8   (Witness excused)

9   THE COURT: Anything further, ladies and gentlemen?

10   MR. SANTORI: Nothing further, your Honor.

11   THE COURT: Now, what do you all want to do from here?

12   Do you want to submit anything further?

13   MR. REYHANI: Your Honor, we'd like to make a closing

14   statement and if your Honor would like any additional

15   submissions, we'll be happy to --

16   THE COURT: I obviously have to make findings and

17   conclusions and any help anybody wanted to give me would be

18   appreciated.

19   MR. REYHANI: Okay. If I may.

20   THE COURT: Sure, I'll hear you. But what kind of a

21   schedule do you want for that?

22   MR. TOWNSEND: Sorry, your Honor? For a briefing

23   schedule?

24   THE COURT: Pardon me?

25   MR. TOWNSEND: You mean for a briefing schedule?

DBLBBITH   Vessenes - redirect

1   THE COURT: Yes.

2   MR. TOWNSEND: I think --

3   THE COURT: I would think the plaintiff would go

4   first, then the defense, and then a reply.

5   MR. REYHANI: That sounds reasonable, your Honor. We

6   would appreciate the opportunity for-- or if your Honor would

7   prefer not to have a closing statement, then we could just

8   brief it all.

9   THE COURT: It's entirely up to you. I don't think

10   it's necessary, frankly.

11   MR. SANTORI: I think if counsel can agree --

12   THE COURT: Why don't you take a few moments and

13   confer amongst yourselves.

14   (Recess)

15   THE COURT: What do you all want to do now?

16   MR. REYHANI: So we would offer that-- again, your

17   Honor, we would offer the Court that we could take us into

18   binding mediation if that would please the Court.

19   MR. SANTORI: If we're going to discuss settlement,

20   your Honor, I would just ask that we do it off the record.

21   THE COURT: Well, you all get together and you can do

22   anything you want, obviously. You can settle, you can decide

23   to mediate, you can leave it in my tender hands and God help

24   you all. If you want to take a couple of minutes and decide

25   what you want to do, that's fine with me, or decide on the

DBLBBITH   Vessenes – redirect

1   schedule or whatever you want to do.

2   MR. REYHANI: Thank you, your Honor.

3   MR. TOWNSEND: Thank you.

4   (Recess)

5   (Continued on next page)

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DBLVBIT2

1   A F T E R N O O N   S E S S I O N

2   2:30 P.M.

3   THE COURT: I'll hear from the plaintiff.

4   MR. REYHANI: Thank you, your Honor.

5   Going back to the preliminary injunction for a second.

6   THE COURT: Let's not.

7   MR. REYHANI: I'm not going back to the merits or

8   anything, but that we were thinking about it during our break

9   that we would be prepared, on behalf of the plaintiffs, to rest

10   on our papers as is, do a closing argument on that, and let the

11   Court rule on the preliminary injunction to conserve resources

12   and not bury your Honor with additional papers over the course

13   of the next few weeks, if that would be helpful for the Court.

14   If it's helpful for the Court to get additional papers, that's

15   fine; but we're prepared to have you rule on the motion today,

16   tomorrow.

17   THE COURT: And the defense point of view?

18   MR. TOWNSEND: We have no objection to that, your

19   Honor.

20   If the Court wants proposed findings of fact and

21   conclusions of law, we're prepared to provide those.

22   And in addition, with regard to oral argument, I think

23   one of the things Mr. Reyhani and I discussed was that we may

24   need to schedule that now, if there's no need for it, and then

25   obviously if the Court wants to hear from us again, it would be

DBLVBIT2

1 helpful to come back and do that.

2   I hope I'm representing our conversation.

3   MR. REYHANI: We don't think there would be additional

4 need for argument. We're prepared to do a ten-minute argument

5 right now and conclude the preliminary injunction motion.

6   THE COURT: If that's what both sides want, that's

7 fine with me. You run a risk obviously, but that's up to you.

8   MR. TOWNSEND: Your Honor, I think it would be helpful

9 to have proposed findings. And we can provide them in word

10 format, and you can cut and paste them as you see fit.

11   THE COURT: Either way, we've got this problem of the

12 TRO.

13   MR. REYHANI: Right.

14   THE COURT: Either way.

15   MR. REYHANI: That's why we came up with the

16 suggestion, so we would not be before your Honor every ten

17 days. We could argue the TRO today --

18   THE COURT: I can take care of the timing of the TRO.

19 That's easy. But whether or not to issue it is the question.

20   MR. REYHANI: We understand, your Honor.

21   Would you prefer that we close on the preliminary

22 injunction or argue the TRO first?

23   THE COURT: Let me hear you on the TRO.

24   MR. REYHANI: I'll be as brief as possible.

25   Your Honor has heard significant argument and has

DBLVBIT2

1   received significant papers which we believe demonstrate that

2   the plaintiff, Bitvestment, will be harmed absent injunctive

3   relief, including a continued or a new temporary restraining

4   order. The harm that would be to Bitvestment is demonstrated

5   by the fact that the defendants, during the time we had oral

6   argument before your Honor on October 29th, pretty much to the

7   minute was in the process of transferring bitcoins out of their

8   possession, custody, or control, or to another address that

9   they control. And we submit that such bitcoins may or may not

10   be the property of Bitvestment.

11   We believe that Bitvestment Has already established

12   before your Honor the likelihood of success on the merits as to

13   the contract, and I will get into that a little bit more

14   shortly. We believe a balance of hardships heavily weighs in

15   favor of the plaintiff. And we also believe that injunction

16   and a temporary restraining order pending determination on the

17   preliminary injunction would indeed serve the public interest.

18   I don't want to rehash all the facts of the matter

19   before your Honor; I want to try to do this as quickly as

20   possible.

21   THE COURT: I don't think I have the TRO.

22   MR. REYHANI: We have a copy here, your Honor, if it

23   would be helpful.

24   THE COURT: Anything else?

25   MR. REYHANI: There has been obviously additional

DBLVBIT2

1   issues that have transpired since we last argued the need for

2   temporary restraints. Alydian has filed for bankruptcy. We're

3   aware that Coinlab wants to return other folks' money, and we

4   believe that we need to protect Bitvestment's contractual

5   rights with regards to the bitcoins that are supposed to be

6   delivered to it.

7   We would request, with regards to any additional

8   temporary restraining order that your Honor would grant us,

9   that Coinlab and Defendant Vessenes in his capacity as CEO of

10   that company, be ordered to utilize best efforts by initiating

11   a third-party miner to begin to mine bitcoins for Bitvestment.

12   Alternatively, we would request that your Honor order the

13   turnover of the almost 8,000 bitcoins that are sitting at that

14   12ZZ address that we discussed earlier, to be delivered to

15   Bitvestment in an effort to conserve Coinlab's resources and to

16   make it more practical for them to continue to do business on a

17   day-to-day basis.

18   MR. TOWNSEND: If it's okay with the Court, my

19   preference would be to consolidate the preliminary injunction

20   argument and the TRO argument. I'm happy to speak to both, but

21   I think there's a lot of overlap between the two.

22   THE COURT: Let's do the TRO.

23   MR. TOWNSEND: Thank you, your Honor.

24   We do not believe the TRO should issue in this case,

25   the same reason the preliminary injunction should not issue;

DBLVBIT2

1   it's a money damages case. In the same way that a case for a

2   stock, the value of bitcoins goes up and down. At the end of

3   the day, the case is about money. Plaintiffs cannot show

4   irreparable harm; and, therefore, in fact, they acknowledge

5   that they have the bitcoins and financial -- in fact, it is the

6   very essence of their case, is that they have resources, so

7   therefore should be out spending that money mining on their

8   behalf. If that is, in fact, proven at the end of the day at

9   trial, that will be satisfiable by money damages.

10   And furthermore, I don't believe it's in the public's

11   best interest. There are other members of the public who have

12   claims. And I certainly think that it's frankly outrageous,

13   your Honor, to try to bind Mr. Vessenes individually. He's not

14   a party to the contract; he's not a bitcoin miner. He engaged

15   in this de minimis bitcoin mining through these little thumb

16   drives two years ago briefly. That's the only testimony that's

17   been presented. So I think there should be little dispute that

18   Mr. Vessenes shouldn't be a party to either the preliminary

19   injunction or the TRO.

20   With regard to the bankruptcy, certainly there are

21   claims to be made in the bankruptcy, and Bitvestment has gotten

22   notice of that bankruptcy and presumably will respond and

23   assert claims there in that context.

24   And so I think under the balance of the hardship,

25   plaintiffs essentially admit that at the end of the day, if

DBLVBIT2

1   they are going to prevail on the merits, that they would be

2   able to satisfy judgment, and it's a breach of contract case

3   that's not suitable for a TRO or a preliminary injunction.

4   That's all we have, your Honor.

5   THE COURT: We'll take a short recess. Thanks.

6   (Recess)

7   THE COURT: Thank you all very much.

8   I will sign a temporary restraint which will provide

9   as follows: In order to maintain the status quo, the

10   defendants Coinlabs, Inc. and CLI Holdings shall retain

11   7,984.006735 bitcoins.

12   And we will have final argument on January 16th at

13   10 o'clock, unless we change that. And you can work out any

14   kind of a schedule you all want to with respect to any proposed

15   findings, briefs, whatever you want to offer me.

16   Is there anything further?

17   MR. TOWNSEND: Yes, your Honor.

18   Two points.

19   CLI Holdings is the Alydian company; so CLI Holdings

20   is subject to the automatic stay.

21   THE COURT: I'm sorry, it is what?

22   THE LAW CLERK: Alydian.

23   MR. TOWNSEND: Alydian is a d/b/a of CLI Holdings. So

24   they are in the bankruptcy; so they are subject to the

25   automatic stay.

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1   THE COURT: CLI is, in effect, Alydian.

2   MR. TOWNSEND: Yes. And CLI is the bankruptcy.

3   THE COURT: Agreed?

4   MR. REYHANI: Yes, sir.

5   THE COURT: Okay. So not them, it's just Coinlabs.

6   Anything else?

7   MR. TOWNSEND: Yes.

8   We would like to have it bonded.

9   THE COURT: Presumably for $7 million.

10   MR. TOWNSEND: 7,984 bitcoins. I think the real

11   damage to Coinlab would be the ability to liquidate those

12   bitcoins.

13   THE COURT: At a later date.

14   MR. TOWNSEND: If we spike now and then it goes down

15   to 200, there's a significant loss to Coinlab, and that should

16   be bonded.

17   THE COURT: We've been around that track; you agreed

18   not to bond. I don't know how you would calculate that number,

19   because God only knows what the market is going to be.

20   MR. TOWNSEND: That's precisely the reason why it

21   needs to be bonded.

22   THE COURT: It could be either way. I think not.

23   Anything else?

24   MR. TOWNSEND: Nothing further.

25   MR. REYHANI: So the January 16 date was for the

DBLVBIT2

1   closing argument on the preliminary injunction?

2   THE COURT: Yes.

3   And you all can work out your schedule.

4   MR. TOWNSEND: Thank you, your Honor.

5   THE COURT: Thanks very much.

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